16-160

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~844.~~ 94

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

FREDERICK FRERICHS, CLAIMANT OF THE HOUSE, LOT &c., KNOWN AS NO. 3 ABBATOIR PLACE, IN THE CITY, OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 15, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 344.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States of America, informants, and the House, Lot, &c., known as number three Abbatoir Place, &c., in the city of New York, Frederick Frerichs, claimant, a manifest error has happened, to the great damage of the said United States of America, as is said, and as appears by their complaint: We, being willing that such error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 17th day of September, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Sept. 16th, 1879. Allowed.

WM. G. CHOATE.

2 (Indorsed:) U. S. Supreme Court. The United States of America vs. House, Lot, &c., No. 3 Abbatoir Place in the city of New York, Frederick Frerichs, claimant. Writ of error, due service of U. S. circuit court. Filed Sep. 18, 1879. John I. Davenport, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do
3 hereby certify that the following pages numbered from four to eighty inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of the United States of America plaintiff in error, against the House, Lot, &c., known as number three Abbatoir Place, &c., in the city of New York, Frederick Frerichs, claimant, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of October, in the

year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

4 United States circuit court for the southern district of New York.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
against
HOUSE, LOT, &C., NO. 3 ABBATTIOR PLACE, New York City, Frederick Frerichs, claimant, defendant in error. } A, 231.

WRIT OF ERROR AND RECORD.

Stewart L. Woodford, U. S. attorney.
Salomon & Burke, proctors for claimant.
New York: William A. Wheeler, jr., stationer and printer, No. 206 Broadway, 1879.
U. S. circuit court. Filed May 22, 1879. John J. Davenport, clerk.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America, informants, and the lot of land, with the buildings thereon, known as number three Abattoir Place, in the city of New York, a manifest error hath happened, to the great damage of the said United States of America, as is said, and as appears by their complaint: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the circuit court of the United States for the southern district of New York, at the city of New York, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the circuit court may cause further to done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

6 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

[L. S.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District, in the Second Circuit.

The foregoing writ is allowed. July 9, 1878.

SAM'L BLATCHFORD.

(Endorsed:) A, 563. U. S. circuit court, southern dist. of New York. The United States of America, pl'ffs in error, ag'st (1) Lot of land &c., situated No. 3 Abbatoir Place, N. Y. City. Writ of error. Stewart L. Woodford, U. S. att'y. Rec'd Oct. 8, 1878. Service of a copy of within writ of error hereby admitted. New York, October 7, 1878. Salomon & Burke, attorneys for Frederick Frerichs. U. S. district court, southern district of New York.

I hereby certify that the within is a correct return of the papers and proceedings on the writ of error in the case of the United States ag'st a house and lot of land at No. 3 Abattoir Place.

[L. S.] SAM'L H. LYMAN,
Clerk of U. S. District for said District.

By the honorable Samuel Blatchford, judge of the circuit court of the the United States for the southern district of New York.

To the claimant in the suit of the United States of America, informants, against the lot of land, with the buildings thereon, known as No. 3 Abattoir Place, in the city of New York.

Whereas the United States of America, the informants herein, lately sued out a writ of error from the circuit court of the United States for the southern district of New York, to reverse a judgment rendered by the judge of the district court of the United States for the southern district of New York (upon a verdict rendered by the jury empannelled and sworn in said action) in favor of said claimant;

You are, therefore, hereby cited to appear before the said circuit court, at the city of New York, on the third Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, the ninth day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

SAM'L BLATCHFORD.

District court of the United States of America, for the southern district of New York, of May term, in the year one thousand eight hundred and seventy-six, before the honorable Samuel Blatchford, the district judge:

On the 26th day of May, in the year one thousand eight hundred and seventy-six, comes George Bliss, esq., the attorney for the United States in the said southern district of New York, to prosecute a civil action in which the United States are concerned, and informs the court:

That the United States of America hereby bring suit against certain property, to wit: A distillery, at No. 3 Abattoir Place, West 39th street, in the city of New York; and a certain lot and tract of land on which said distillery stands and is situated; and certain real estate; and certain premises connected with said distillery, and used for ingress and egress to and from the same; and all right, title, and interest therein; and certain things; and certain distilled spirits, wines and liquors, contained in casks, vessels, cases, and other packages; and
8 certain stills and other apparatus fit and intended to be used for the distillation and rectification of spirits, and for the compounding of liquors; and certain raw material fit and intended to be used for the manufacture and production of distilled spirits; and certain personal

property on the premises aforesaid, used in the business there carried on; and certain goods and commodities, and certain materials, utensils, and vessels proper and intended to be used for and in the making of such goods and commodities; and certain other personal property; all of which is more particularly described in the following schedule thereof, to wit:

That certain piece and lot of land, situate, lying and being in the city of New York, and known as No. 3 Abattoir Place, the same being twenty-one feet in width and about eighty-one feet in length, and bounded as follows, to wit:

Commencing at a point on the south side of Thirty-ninth street, about forty-two feet west of Eleventh avenue; thence running south about eighty-one feet to an alley; thence west about twenty-one feet; thence north about eighty-one feet to the south side of Thirty-ninth street; thence east along the south side of Thirty-ninth street twenty-one feet, to the place of beginning; together with the two-story brick building and all other buildings thereon.

Also, one steam-boiler, with attachments; one wooden still; one worm; one receiver; twenty-one barrels, said to contain vinegar; forty empty barrels, and one chaldron of coke; being within said southern district of New York, in the custody of Charles R. Coster, collector of internal revenue for the fourth collection district of the State of New York, to recover a forfeiture thereof, imposed by the internal-revenue laws of the United States; and that the property before mentioned and described was found on the 22d day of May, in the year one thousand eight hundred and seventy-six, within the said southern district of New York, and within the said collection district by the said Charles R. Coster, who was, then and there, collector as aforesaid, on
9 land, at a certain place, and within certain buildings, rooms, yards, and enclosures, constituting and connected with the premises known as No 3 Abattoir Place (West 39th street), in the city of New York, and was, then and there seized by the said collector for the forfeiture aforesaid, and has since remained in his care and custody as forfeited to the United States as aforesaid.

And the said attorney for the United States, now, here prosecuting in the name of the United States in that behalf, doth articulately propound the matters relied on as grounds or causes of the said forfeiture, as follows:

Revised Statutes, § 3453.

For that the said distilled spirits, found and seized as aforesaid, were then and there, goods, wares, and merchandise, articles and objects, on which taxes were, then and there, imposed by the provisions of law, and were then and there, found in the possession and in the custody, and within the control of some person or persons to the said attorney unknown, for the purpose of being sold and removed by such person or persons, in fraud of the internal-revenue laws, and with design to avoid payment of said taxes, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case, provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States. And said was raw material, which was, then and there, fit to be manufactured into articles of a kind subject to tax, to wit, distilled spir-

its, and, then and there, was found in the possession of said person, who, then and there, intended to manufacture the same into such articles for the purpose of fraudulently selling such manufactured articles, and with design to evade the payment of said tax; and was raw material, fit to be manufactured as aforesaid, and was personal
10 property, which was, then and there, found in the place and building, and within the yards and enclosures, where the said distilled spirits were found as aforesaid; against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said raw material became and is forfeited to the United States. And the property, other than the said distilled spirits and raw material, which was found and seized as aforesaid, was, then and there, tools, implements, instruments, and personal property, and was, then and there, found in the place and building, and within the yards and enclosures, where the said distilled spirits, and where said raw material, were found as aforesaid. Whereby, and by force of the statute of the United States in such case provided, the said property, other than the said distilled spirits, became and is forfeited to the United States.

For that the said distilled spirits, found and seized as aforesaid, were, then and there, found elsewhere than in a distillery, or distillery warehouse; and the same, then and there, having been produced within the United States, in a certain distillery to said attorney unknown, had not been removed from said distillery according to law, in this, that the said distilled spirits, then and there, had been removed from said distillery without being drawn into casks; and without being gauged, proved, and marked; and without being immediately removed into the distillery warehouse; and without being stamped; and without being entered for deposit in the distillery warehouse; and without execution of the bond for payment of the tax on said spirits, as required by law, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States. Revised Statutes, §§ 3209, 3287, 3293.

For that the said distilled spirits, found and seized
11 as aforesaid, were, then and there, found elsewhere than in a distillery or distillery warehouse; and the same, then and there, being distilled spirits on which taxes were imposed by law, and having been theretofore in a certain distillery warehouse to said attorney unknown, had not been removed from said distillery warehouse according to law, in this, that the said distilled spirits, then and there, had been removed from said distillery warehouse without payment of the tax thereon; and without making a withdrawal entry thereof; and without any order for the delivery thereof; and without the casks and packages containing said spirits being stamped, cut, marked, and branded, as required by law, against the form of the stat- §§ 3209, 3294, 3295.

ute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

§ 3242. For that the said distilled spirits and wines, and the said stills and other apparatus fit and intended to be used for the distillation and rectification of spirits, and for the compounding of liquors, found and seized as aforesaid, were, then and there, owned by some person or persons to the said attorney unknown, who did,* then 'nd there,* at a place and time to said attorney unknown,* carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, and manufacturer of stills, without having paid the special tax as required by law, against the form of the statute of the United States in such case provided. And the said property, found and seized as aforesaid, was, then and there, distilled spirits, wines, and personal property, which was, then and there, found in the rectifying establishment of the said and in certain buildings, rooms, yards, and enclosures connected therewith, and used with and constituting a part of the premises. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits and wines, and the 12 casks, vessels, cases, and other packages containing them, the stills, and other apparatus and personal property, became and are forfeited to the United States.

§ 3323. For that the said distilled spirits, found and seized as aforesaid, being, then and there, distilled spirits on which taxes were imposed by law, had theretofore been rectified, and being so rectified, then and there, had been drawn from certain casks and packages, and placed in certain other casks and packages, each containing not less than ten gallons, and intended for sale, and were not thereupon again inspected and gauged; and the said casks and packages into which the said distilled spirits were transferred as aforesaid, then and there, and thereafter, were not marked and branded so as distinctly to indicate the name of the gauger, the time and place of inspection, the proof of the spirits, the particular name of such spirits as known to the trade, together with the name and place of business of the dealer and also the rectifier, and the serial number of the rectifier's stamp, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

§3223. For that the said distilled spirits, found and seized as that aforesaid, being, then and there, distilled spirits on which taxes were imposed by law, were, then and there, unrectified spirits, and being such, then and there, had been drawn from certain casks and packages, and placed in certain other casks and packages, each containing not less than ten gallons, and intended for sale, and were not thereupon again inspected and gauged; and the said casks and pack-

ages into which the said distilled spirits were transferred as aforesaid, then and there, and thereafter, were not marked and branded so as distinctly to indicate the name of the gauger, the time and place of inspection, the proof
13 of the spirits, the particular name of such spirits as known to the trade, together with the name and place of business of the dealer, and the name also of the distiller, and the distillery where such spirits were produced, and the serial number of the original cask or package, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

§ 3289.

For that the said distilled spirits, found and seized as aforesaid, being, then and there, distilled spirits on which taxes were imposed by law, were, then and there, in casks and packages, each containing five gallons or more, and were found as aforesaid, then and there, each of the said casks and packages not having thereon each mark and stamp required therefor by law, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits became and are forfeited to the United States.

§§ 3289, 3287, 3295.

For that the said distilled spirits, found and seized as aforesaid, were, then and there, distilled spirits which were in casks and packages which were the original casks and packages into which the same had been drawn from the receiving cisterns in the distillery where the same were produced; and the said distilled spirits, being in said casks and packages as aforesaid, each containing five gallons or more, were, then and there, found as aforesaid, without each of the said casks and packages having thereon each mark and stamp required therefor by sections 3287 and 3295 of the Revised Statues of the United States, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

14 For that the said distilled spirits, found and seized as aforesaid, being, then and there, spirits on which taxes were imposed by law, were, then and there, spirits which had been rectified, and being such rectified spirits, theretofore each of the said casks and packages in which the same were found as aforesaid, were filled with the said spirits, for shipment, sale, and delivery, on the premises of a certain rectifier, to said attorney unknown, who had paid the special tax required by law; and the said distilled spirits, being in the said casks and packages as aforesaid, each containing five gallons or more, were found as aforesaid, then and there, without each of the said casks and packages having thereon each mark and stamp required therefor by section 3320 of the Revised Statutes of the United States,

§§ 3289, 3320.

against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

Revised Statutes, §§3289, 3321.

For that the said distilled spirits, found and seized as aforesaid being, then and there, distilled spirits on which taxes were imposed by law, were, then and there, found in the said casks and packages, which theretofore were filled with the said distilled spirits, for shipment, sale, and delivery, on the premises of a certain wholesale liquor dealer to said attorney unknown; and the said distilled spirits, being in the said casks and packages as aforesaid, each containing not less than five wine gallons, were found as aforesaid, then and there, without each of the said casks and packages having thereon each mark and stamp required therefor by section 3321 of the Revised Statutes of the United States, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

§ 3456.

15 For that the said distilled spirits and liquors, found and seized as aforesaid, were, then and there, owned by a person to said attorney unknown, who, then and there, at some time and place to said attorney unknown,* carried on the business of a distiller, rectifier, and wholesale liquor dealer; and were, then and there, distilled spirits and liquors in which the said unknown person, then and there, had an interest as owner; and that the said unknown person, theretofore, to wit, on or about the twenty-second day of May, in the year one thousand eight hundred and seventy-six, *at the place unknown aforesaid* being, then and there, such distiller, rectifier, and wholesale liquor dealer, as aforesaid, did, knowingly and willfully, omit, neglect, and refuse to do and cause to be done, certain of the things required by the Revised Statutes of the United States in the carrying on and conducting of his business; and especially in this, that the said unknown person, then and there, did, knowingly and wilfully omit, neglect, and refuse to register the distillery, rectifying establishment, and other place where such business was carried on, as required by section 3233; and to pay the tax which was, then and there, due thereupon, from said person and persons to the United States; and to give the notice required by section 3260; and to cause to be made and furnished a plan of said distillery as required by section 3263; and to erect and maintain a cistern-room as required by section 3267; and to construct and maintain the furnaces, tubs, doublers, and worms in said distillery, as required by section 3269; and to provide and maintain a distillery warehouse as required by section 3271; and to comply with section 3280; and to employ certain fermenting-tubs as required by section 3285; and to keep and maintain books as required by section 3303; and to make the returns required by section 3307;

and to make a return upon demand in conformity with section 3317; and to keep and maintain books, and to make entries therein as required by section 3318; against the form of the statute of the United States in such case
16 provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits and liquors, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

For that the said distilled spirits and liquors, found and seized as aforesaid, were, then and there, owned by a person to said attorney unknown, who, then and there, *at some time and place to said attorney unknown,* carried on the business of a distiller, rectifier, and wholesale liquor dealer, and were, then and there, distilled spirits and liquors in which the said *said* unknown person, then and there, had an interest as owner; and that the said unknown person, theretofore, to wit, on or about the 22d day of May, in the year one thousand eight hundred and seventy-six, at *at the place unknown aforesaid,* being then and there, such distiller, rectifier, and wholesale liquor dealer, as aforesaid, did knowingly and wilfully do certain of the things prohibited by sections 3274 and other sections of the Revised Statutes of the United States, and especially in this, that the said unknown person being engaged in the business of a distiller, as aforesaid, and having then and there, a distillery warehouse provided for such business, did, then and there, knowingly and wilfully receive into said distillery warehouse, and did then and there, knowingly and wilfully deliver therefrom certain articles without an order or permit therefor, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, the said distilled spirits and liquors, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States. § 3456.

For that the said distilled spirits, found and seized as aforesaid, were, then and there, distilled spirits upon which the tax had not been paid, and some person to said attorney unknown, had, prior thereto, and before the tax thereon had been paid, added or caused to be added to said
17 distilled spirits, certain ingredients and substances for the purpose of creating a fictitious proof thereof, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said distilled spirits, and the casks, vessels, cases, and other packages containing them, became, and are forfeited to the United States. Revised Statutes, § 3252.

For that said distillery and distilling apparatus, found and seized as aforesaid, were, then and there, used by some person to said attorney unknown, who, was then and there engaged in carrying on the business of a distiller, and who, then and there, defrauded and attempted to defraud the United States of the tax on the spirits distilled by them or some part thereof, against the form of the statute of the § 3257.

United States in such case provided. And said distilled spirits and raw materials found and seized as aforesaid, were, then and there, found in said distillery and on the distillery premises. Whereby, and by force of the statute of the United States in such case provided, said distillery and distilling apparatus, and said raw materials, and said distilled spirits, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

§ 3258. For that said still and distilling apparatus, found and seized as aforesaid, were, then and there, set up, and were, then and there, in the possession and custody, and under the control of some person to said attorney unknown, who had not immediately upon their being set up, registered the same as required by section 3258 of the Revised Statutes of the United States, against the form of the statute of the United States in such case provided. And said property, other than said still and distilling apparatus, found and seized as aforesaid, was, then and there, personal property in the possession and custody, and under the control of such person, and found in the building in which said still and distilling apparatus were set up as aforesaid, and in certain yards and enclosures connected therewith.

18 Whereby, and by force of the statute of the United States in such case provided, said still and distilling apparatus, and said other property, became and are forfeited to the United States.

§ 3260. For that said distillery, distilling apparatus, and said real estate, and the premises connected therewith, which were found and seized as aforesaid, were, then and there, owned by some person to said attorney unknown, who then and there, had commenced, and who, then and there, was engaged in carrying on the business of a distiller, and were, then and there, used by said person in said business, who, then and there, and prior thereto, failed and refused to give the bond required by section 3260 of the Revised Statutes of the United States, and who, then and there, failed and refused to renew said bond; and who, then and there, gave a false, forged, and fraudulent bond therefor, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said distillery and distilling apparatus, and said real estate and premises connected therewith, became and are forfeited to the United States.

§ 3281. For that said distilled spirits and wines, and said stills and other apparatus which were, then and there, fit and intended to be used for the distillation and rectification of spirits, and for the compounding of liquors, found and seized as aforesaid, were, then and there, owned by some person to said attorney unknown; and said right, title, and interest in said lot and tract of land on which said distillery is situated, and which was found and seized as aforesaid, was, then and there, owned by some person, who, then and there, carried on the business of a distiller without having given bond as required by law, and who, then and there, engaged in and carried on the business of a distiller

with intent, then and there, to defraud the United States of the tax on the spirits distilled by him or of some part thereof, against the form of the statute of the United States in such case provided. And said distilled spirits
19 and wines, and all the personal property aforesaid, were, then and there, found in said distillery, and in certain buildings, rooms, yards, and enclosures connected therewith, and used with and constituting a part of the premises. Whereby, and by force of the statute of the United States in such case provided, said distilled spirits and wines, and said stills and other apparatus, and right, title, and interest in said lot and tract of land, and all the personal property aforesaid, became and are forfeited to the United States.

For that said real estate and lot and tract of land, and all right, title, and interest therein, found and seized as § 3281.
aforesaid, were owned, then and there, by some person to said attorney unknown, who, then and there, knowingly suffered and permitted the business of a distiller to be there carried on, and who, then and there, connived at the same, by some person to said attorney unknown, without having given bond as required by law, and who was, then and there, engaged in and carrying on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or of some part thereof, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such provided, said real estate, lot, and tract of land, and all right, title, and interest therein became and are forfeited to the United States.

For that said personal property, found and seized as aforesaid, was, then and there, owned by, and was, then § 3281.
and there, in the possession of some person to said attorney unknown, and was, then and there, found in certain buildings, yards, and inclosures which, or some part whereof, said person, then and there, permitted and suffered to be used for purposes of ingress and egress, to and from a distillery in which the business of a distiller was then and there carried on by some person to said attorney unknown, without having given bond as required by law, and who, then and there, engaged in and carried on the
20 business of a distiller, with intent, then and there, to defraud the United States of the tax on the spirits distilled by him, or of some part thereof, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said personal property became and is forfeited to the United States.

For that said premises, and all right, title, and interest therein, found and seized as aforesaid, were, then and there, § 3281.
owned by some person to said attorney unknown, who, then and there, knowingly suffered and permitted such premises to be used for ingress and egress to and from the distillery aforesaid which, then and there, was used by some person to said attorney unknown, in carrying on the business of a distiller without having given bond as required by law, and

who, then and there, engaged in and carried on the business of a distiller with intent, then and there, to defraud the United States of the tax on the spirits distilled by him, or of some part thereof, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said premises and all right, title, and interest therein, became and are forfeited to the United States.

§ 3288. For that said distilled spirits, found and seized as aforesaid, were, then and there, stored and allowed to remain upon certain premises, which were, then and there, distillery premises, the tax upon said distilled spirits having theretofore been paid, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said distilled spirits and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

Revised Statutes, §§ 3303, 3304. For that said distillery, distilling apparatus and the lot and tract of land on which it stands, aforesaid, found and seized as aforesaid, were, then and there, owned by some person to said attorney unknown, and were, then
21 and there, used by said person, who, then and there, made and distilled spirits, and who, then and there, owned a certain still, boiler, and other vessel used, then and there, for the purpose of distilling spirits, and who, then and there, had such still, boiler, and other vessels so used, under his superintendance, and who, then and there, used such still, boiler, and other vessel, and who, then and there, omitted and refused to provide one of the books required by law in respect of the premises; and who, then and there, had certain books required by law in respect of the premises in which, then and there, certain false entries were made, and from which, then and there certain entries required by law to be made were omitted, with intent, then and there, to defraud, and with intent, then and there, to conceal from the revenue officers certain facts and particulars required by law to be stated and entered in said books, and in one of them, and with intent, then and there, to mislead in reference thereto; and who, then and there, had certain books required by law in respect of the premises, and who, then and there, canceled, obliterated, and destroyed a part of one of said books, and a certain entry therein, with intent, then and there, to defraud, and who permitted the same to be done; and such books being, then and there, required by a revenue officer, to wit, by Charles R. Coster, who was, then and there, a collector of internal revenue, to be produced, the same were not produced, nor was either of them produced, then and there, as required by law, against the form of the statute of the United States in such case provided. And the personal property aforesaid, found and seized as aforesaid, was, then and there, on said premises and used in the business there carried on as aforesaid against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said distillery,

distilling apparatus, and said lot and tract of land and said personal property, became and are forfeited to the United States.

For that said distilled spirits found and seized as § 3257.
22 aforesaid, were theretofore, at some time to said attorney unknown, in casks and packages each containing more than ten gallons, and being in such casks and packages, were then removed from certain premises and buildings to said attorney unknown, in which the same had theretofore been distilled, and in which the same had theretofore been distilled, and in which the same had been theretofore rectified, and in which the same had been theretofore compounded, and in which the same had been theretofore manufactured, and in which the same had been theretofore stored, at a time which was, then and there, a time other than after sunrising and before sunsetting; and said horses, carts, boats, and other conveyances were, then and there, used in the removal thereof as aforesaid, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said distilled spirits, and the casks, vessels, cases, and other packages containing them, and said horses, carts, boats, and other conveyances, became and are forfeited to the United States.

For that the wines and liquors found and seized as afore- § 3449.
said, were, then and there, in certain casks and packages, and then and there were known to the trade by a certain name and brand, to wit, *by some name and brand to said attorney unknown*, which designated the kind and quality thereof, and were, then and there, shipped, transported, and removed by some person to said attorney unknown, then and there, under another than the proper name and brand aforesaid, against the form of the statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case, provided, said wines and liquors, and the casks, vessels, cases, and other packages containing them, became and are forfeited to the United States.

For that the goods and commodities found and seized as § 3450.
aforesaid, were, then and there, goods and commodities for
and in respect whereof, a tax was, then and there,
23 imposed, and said materials, utensils, and vessels, found and seized as aforesaid, were, then and there, proper and intended to be used for and in the making of such goods and commodities, all of which were, then and there, removed, deposited, and concealed in some place to said attorney unknown, with intent, then and there, to defraud the United States of such tax, and of some part thereof, against the form of the statute of the United States in such case provided. And the casks, vessels, cases, and other packages aforesaid, then and there, contained and had contained such goods and commodities. And said horses and other animals, vessels, boats, carriages, carts, and other conveyances and things, then and there, were used in the removal and for the deposit and concealment of such goods and commodities, against the form of the

statute of the United States in such case provided. Whereby, and by force of the statute of the United States in such case provided, said goods and commodities, and said casks, vessels, cases, and other packages, and said horses and other animals, carriages, vessels, boats, carts, and other conveyances and things, became and are forfeited to the United States.

And therefore, by reason of all and singular the premises aforesaid, the said attorney for the United States, on behalf of the United States, prays the court that due process issue to enforce the said forfeiture of the said property, found and seized as aforesaid, and to give notice to all persons concerned in interest, to appear and show cause, on the return-day of the process, why the said forfeiture should not be decreed.

GEORGE BLISS,
Attorney for the United States for the Southern District of New York.
J. B. F.

24 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas, an information was filed in the district court of the United States for the southern district of New York, on the 27th day of May, in the year of our Lord one thousand eight hundred and seventy-six, by George Bliss, esq., United States district attorney, on behalf of the United States of America, against that certain piece and lot of land, situate, lying, and being in the city of New York, and known as No. 3 Abattoir Place, the same being 21 feet in width, and about 81 feet in length, and bounded as follows, to wit: Commencing at a point on the south side of 39th street about 42 feet west of 11th avenue; thence running south about 81 feet to an alley; thence west about 21 feet; thence north about 81 feet to the south side of 39th street; thence east, along the south side of 39th street, 21 feet to the place of beginning; together with the two-story brick building and all other buildings, thereon.

Also one steamer boiler, with attachments; one wooden still; one worm; one receiver; 21 barrels said to contain vinegar; 40 empty barrels; and one chaldron of coke, for the reason and causes in the said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said lot of land, house, &c., &c., and said goods, wares, merchandise, and articles may be cited in general and special, to answer the premises, and all proceedings being had that the said lot of land, house, &c., and said goods, wares, merchandise, and articles may, for the causes in the said information mentioned, be condemned as forfeited to the use of the United States.

You are therefore hereby commanded to attach the said lot of
25 land, house, &c., and said goods, wares, merchandise, and articles, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said information, that they be and appear before the said court to be

held in and for the southern district of New York, on the 20th day of June next at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 27th day of May, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundre'th.

GEO. F. BETTS, *Clerk.*

GEORGE BLISS,
U. S. District Attorney.

In obedience to the within monition, I attached the property therein described, on the 29th day of May, 1876, and have given due notice to all persons claiming the same that this court will, on the 20th day of June, inst. (if that day shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof should no claim be interposed for the same.

Dated June 20, 1876.

OLIVER FISKE,
U. S. Marshal.

26 In the district court of the United States, for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
A CERTAIN PIECE OF LAND SITUATE IN THE city of New York, known as No. 3 Abattoir Place, and the buildings thereon, and also one steam-boiler and certain other personal property thereon, seized for alleged violation of the revised laws of the said United States, on the 22d day of May, 1876, by Charles R. Coster, collector of internal revenue of the said United States.

And now Frederick Frerichs, owner of the said steam-boiler and other personal property in the buildings on said piece of land, situate in the city of New York, known as No. 3 Abattoir Place, and tenant and in possession of the said piece of land and the buildings thereon, intervening for the interest of himself as owner of the said steam-boiler and other personal property, and as tenant and in possession of the said piece of land and the buildings thereon, appears before this honorable court and makes claim to the said steam-boiler and other personal property, and the said piece of land and the buildings thereon as the same are seized by the marshal, under process of this court, at the instance of the said United States, and the said Frederick Frerichs avers that he was in the possession of the said steam-boiler and other personal property, and in the said piece of land and the buildings thereon, at the time of the seizure thereof, and that he is the true and bona fide owner of the said personal property and that no other person is the owner thereof, and that he is the tenant and in possession of

27 the said piece of land and the buildings thereon, and that no other person is a tenant or in possession thereof.

And the said Frederick Frerichs, as such claimant as aforesaid, for answer to the information against the said steam-boiler and other personal property and the said piece of land and the buildings thereon, says that the said steam-boiler and other personal property and the said piece of land and the buildings thereon, in the said information described, did not, nor did any part thereof, become forfeited in manner and form as in the said information in that behalf alleged.

FREDERICK FRERICHS,
Claimant.

SALOMON & BURKE,
Proctors for Claimant, No. 4 Wall street, New York.

Subscribed and sworn to before me, this 17th day of June, 1876.
GEO. F. BETTS,
U. S. Commissioner.

28 At a stated term of the district court of United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on the fourteenth day of May, one thousand eight hundred and seventy-seven,

Present, the honorable Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA
vs.
(HOUSE AND LOT &C., &C.) A CERTAIN PIECE of land situate in the city of New York, known as No. 3 Abattoir Place, and the buildings thereon, and also one steam-boiler and certain other personal property thereon, seized for alleged violation of the revenue laws of the said U. S. on the 22d day of May, 1876, by Charles R. Coster, collector of int. rev. of the said United States. } A. 563.

The jury empannelled to try the issue joined between the United States of America, informants, against a certain piece of land situate in the city of New York, known as No. 3 Abattoir Place, and the buildings thereon, and also one steam-boiler and certain other personal property thereon, seized for alleged violation of the revenue laws of the said U. S. on the 22d day of May, 1876, by Charles R. Coster, collector of int'l rev'e of the said U. S., Frederick Frerichs, claimant, having by their verdict found for the said claimant on said issue, it is thereupon, on motion of Salomon and Burke, proctors for the said claimant,

29 Ordered, adjudged, and decreed, that the said information be, and the same is hereby, dismissed, and that the marshal of the United States for the southern district of New York, deliver the property aforesaid to the said Frederick Frerichs.

And it is further ordered that, upon the coming in of the report of John A. Osborn, esq., to whom it was referred by the order of this court, entered herein on the 20th day of April, 1877, to take and report certain testimony, such further other order or decree will be made as to the court may then seem just.

SAMUEL BLATCHFORD.

30 At a stated term of the district court of the United States, for the southern district of New York, held at the United States court and post-office building in the city of New York, the twentieth day of April, one thousand eight hundred and seventy-seven.

Present, Hon. Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA
vs.
A CERTAIN PIECE OF LAND SITUATE IN THE city of New York, known as No. 3 Abattoir Place, and the buildings thereon, and also one steam-boiler and certain other personal property thereon, seized for alleged violation of the revenue laws of the said U. S. on the 22d day of May, 1876, by Charles R. Coster, collector of int. rev. of the said U. S.

This suit having been tried, and a verdict, under the direction of the court, rendered in favor of the claimant, and the attorney of the United States having moved the court for a certificate that there was reasonable cause of seizure, and the claimant having offered and now offering to produce further testimony touching said motion, which testimony was offered at said trial and was then excluded,

It is ordered that it be, and is hereby, referred to John A. Osborn, esquire, commissioner, &c., to take and report to this court such
31 testimony concerning said motion as may be offered by either side, and that each of the respective parties shall give two days notice to the other party of the time and place of taking such testimony. If any question should arise concerning the admissibility or competency of the testimony offered by either side, or concerning any other matter in the execution of this order, either such testimony may be received and reported, and such matter disposed of, subject to any objection made, or the parties may first submit such question to this court for decision upon the certificate of the referee, before proceeding further in the matter, as they may elect.

SAMUEL BLATCHFORD.

We consent to the foregoing order.

SALOMON & BURKE,
Proctors for Claimant.
STEWART L. WOODFORD,
U. S. Att'y.

R. M. S.

32 U. S. district court, so. dist. of New York.

THE UNITED STATES
vs.
THE DISTILLERY AT 3 ABATTOIR PLACE.

Hon. EDWARD SALOMON, *Claimant's Proctor, 4 Wall st.:*

SIR: I shall move before Judge Blatchford to-morrow to suppress and strike out the following testimony, taken on the reference herein ordered on the motion for an entry of reasonable cause of seizure:

Leave in S. B. In the testimony of May 17th, page 7, the last two lines.
" " " " " 8, " 1st five "
" " " " " 9,
Leave in S. B. " " " " " 10, " last fifteen "
" " " " " 11,
Strike out S. B. " " " " " 12,
" " " " " 15, " last nine lines.
Leave in S. B. " " " " " 25, " " three "
" " " " " 26, " first line.
" " " " " 28, " last two lines.
Strike out S. B. " " " " " 29, " first four lines
Leave in S. B. and last half of page 29.
Strike out S. B. Page 30, lines 13 & 14, and lines 19 to 25, inclusive. Page
Leave in S. B. 35, lines 2 & 3 after "Yes, sir."
In the testimony of May 18th, page 2, 1st question and
Leave in S. B. answer, and all after line 17. All of pages 3 and 4,
33 5, 6, 7, 8, & 12. Page 13, 1st two questions and first
3 answers, and last 3 questions and answers. Page
14, 15, and 16. Page 25, answer of Professor Endemann,
Strike out S. B. commencing with "Probably" and ending with "Cedar st.
office."
Page 39. Question and answer next to last question.
Leave in S. B. Page 40. First question and answer.

Yours, truly,

ROGER M. SHERMAN,
Ass't U. S. Att'y.

34 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on the eighteenth day of December, one thousand eight hundred and seventy-seven.

Present, the honorable Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA
vs
A CERTAIN PIECE OF LAND SITUATED IN THE city of New York, known as No. 3 Abattoir Place, and the buildings thereon, and also one steam-boiler and certain other personal property thereon, seized for alleged violation of the revenue laws of the said U. S. on the 22d day of May, 1876, by Charles R. Coster, collector of int. rev. of the said U. S.

This suit having been tried, and a verdict rendered in favor of Frederick Frerichs, the claimant, and the United States, by its attorney, having thereupon moved the court for a certificate that there was reasonable cause of seizure, and the said claimant having offered to produce further testimony touching said motion, which testimony was offered at said trial and was then excluded, and the court having by its order, entered on the twentieth day of April, 1877, referred it to John A. Osborn, esq., commissioner, to take and report such testi-
35 mony concerning said motion as might by offered by either side, and a decree having been afterwards, and on the fifteenth day of May, 1877, entered upon said verdict, dismissing the said information, and ordering the United States marshal of said district to deliver the

property seized as aforesaid, to the said claimant, and providing that upon the coming in of the report of said referee, such further order or decree would be made as to the court might then seem just; and the report of the said referee having come in and been filed with the clerk of this court; now, upon reading the said report and after hearing the United States attorney in support of said motion, and Edward Salomon of counsel for claimant in opposition thereto,

It is ordered that the said motion for a certificate of reasonable cause of seizure be, and the same is hereby, denied, with leave to the complainants to make a case with exceptions within thirty days after service of a copy of this order on their attorney, with the same effect as if the same had been made, signed, and sealed, immediately upon the recording of the verdict aforesaid.

SAMUEL BLATCHFORD.

36 In the district court of the United States for the southern district of New York.

THE UNITED STATES
against
THE LOT OF LAND WITH THE BUILDING thereon, known as No. 3 Abattoir Place in the city of New York, one steam-boiler, etc.

Bill of exceptions.

Be it remembered that the above cause came on to be tried on the fifth day of June, 1877, before the honorable Samuel Blatchford, the district judge, and a jury.

Whereupon, to support the issues on their part, the plaintiffs proved:

That a still was seized in the custody of Frederick Frerichs, the claimant, at No. 3 Abattoir Place, which is that part of West Thirty-ninth street, in the city of New York, between Tenth avenue and the Hudson River, by Charles R. Coster, then collector of internal revenue for the then fourth collection district of the State of New York, wherein said No. 3 Abattoir Place was then situated, on the 22d day of May, 1876.

Upon the same premises, and being used in the process of distilling, which was then and there going on, said collector then and there found a certain substance, which had been furnished by the firm of Wagner & Hofmeister to said Frerichs, for the purpose of having said substance distilled by said Frerichs, and the distilled product returned to said Wagner & Hofmeister, pursuant to an arrangement between said Frerichs and said Wagner & Hofmeister hereinafter set forth; and
37 said collector then and there found a certain other substance, which was the product of such distilling of other substances similar to the first mentioned.

Further, to maintain the issues on their part the plaintiffs called, as a witness, LAWRENCE BEATTY, who, being duly sworn, testified:

That he is a deputy collector in the fourth collection district of the State of New York. He was present at the seizure of the lot, &c., No. 3 Abattoir Place, May 22d, 1876; he found a still, a boiler, and several barrels filled, to the best of his knowledge, with molasses mash, sour mash. The still was not in operation; it was yet warm. Nothing was running from the worm. He knew Frerichs, and saw him there after the seizure. Witness had been there some days before, while the place

was closed—before the seizure; he went down through the roof. In opening the skylight he perceived that there was a strong smell of rum. No bond had been given for carrying on the business of a distiller of spirits at this place.

And on cross-examination said witness testified as follows:

The still had been registered. Following is a copy:

(26.)

UNITED STATES INTERNAL REVENUE, REGISTRY OF STILLS.

(To be returned in duplicate to the assistant assessor by every person having in his possession or custody, or under his control, any still or distilling apparatus set up. Persons failing to register become liable to a penalty of five hundred dollars, and fine of not less than one hundred dollars, nor more than one thousand dollars, and imprisonment for not less than one month, nor more than two years, in addition to forfeiture of the still and all personal property found in the building, &c., where the same shall be set up. Act July 20, 1868, section 5. A copy of each notice on this form is to be immediately forwarded to the Commissioner of Internal Revenue.)

38 List of stills and distilling apparatus set up at No. 3 Abattoir Place, Thirty-ninth street, in the city of New York, county of New York, and State of New York, in the second division of the fourth collection district of said State, owned by Frederick Frerichs:

Names of owners.	Residence (number and street if in a city).	Kind of still.	Serial No. of distillery.	Cubic contents. Gallons.	For what purpose used.	Whether or not intended to be used.
Frederick Frerichs.	333 W. 40th st ..	1 wooden still with steam worm and copper worm.	.....	1,500	Manufacture of acetic acid.	Yes

(Signed) "FREDERICK FRERICHS.

Received for registry this 1st day of April, A. D. 1876.

"JOHN SHEALS,

"*Dep. Collector, 2nd Division, 4th Collection District, N. Y.*

The witness had been in the collector's office six years. Charles R. Coster is collector, and has been for the last six years. Witness had never been a distiller; had never distilled until December, 1876. Had never made a mash or wort to produce spirits or vinegar, or seen it made. He could not swear that the smell was not that of fusel oil. The smell he perceived at No. 3 Abbattoir Place, was the same as he had found in the illicit rum distilleries. That his experience was confined to illicit distilleries. It smelled like alcohol. He would not swear that the smell he smelt there was alcohol or fusel oil He tasted the molasses mash he found there; tried it in noother way. He had never

tasted it before; it tasted sour. He smelled molasses in it, and
39 thinks he took some to collector's office, and delivered it to the collector. The collector sent him there.

Counsel for the claimant produced two bottles containing liquid which the witness tasted and smelt, and then testified that the contents of the bottle marked "1" did not smell like the smell in the distillery, but that to the best of his belief there was rum in the liquid; that the liquid in the bottle marked "2" was water, in which he could neither smell or taste rum.

Further to maintain the issues on their part, the plaintiffs called, as a witness, EDWARD MCLEAR, who, being duly sworn, testified:

That he is a revenue agent, and has been for three years charged with the duty of looking after illicit distillation of spirits; he is familiar with molasses mash; he examined the vinegar factory of Wagner and Hofmeister, May 19th, 1876, and found molasses mash there in various stages of fermentation; was shown through the building by Mr. Wagner, and saw the process of making vinegar; a vinegar mash was made, which produced a certain portion of spirits, and was then passed through the generator, whence it comes out vinegar; some in the cellar was in the vinous state of fermentation. He then went to No. 3 Abbattoir Place. He found at 3 Abbattoir Place a wooden still of fifteen hundred gallons capacity, and a boiler under it that boiled the contents of the still; there were attached to the still a goose-neck worm and condenser; he examined the tail of the worm; the still was in operation at the time; he found a receiver to receive the product of the still, in which was about one hundred gallons of a liquid.

Further to maintain the issues on their part, the plaintiffs called, as a witness, HERMANN ENDEMANN, who, being duly sworn, testified:

That he was a chemist in the health department of the city of New York; that he was consulted as a chemist by Frerichs, and by Wagner and Hofmeister, about the process carried on by Frerichs at No. 3 Abattoir Place, and became familiar with the operations of that busi-
40 ness; that a substance was produced by Wagner and Hofmeister, at their vinegar factory, a block and a half from No. 3 Abattoir Place, which was sent by them in barrels to No. 3 Abbattoir Place, where it was distilled by Frerichs, and the distilled product returned in barrels to the vinegar factory of Wagner and Hofmeister. This substance was originally molasses, and went through a process of fermentation at the vinegar factory.

There are two processes for the manufacture of vinegar carried on by Wagner and Hofmeister, one was completed at the vinegar factory, the other involved the use of molasses mash. In the first it is made out of water and whiskey; they are mixed. It is the old way, and it was partly yet in operation when the distillery was seized; we intended to give up that process altogether. There was no necessity for distillation in that process. There is a certain amount of whiskey mixed with water and vinegar, and it is brought on generators where it comes in contact with a large volume of air. The generators are so made that they are filled in the interior with shavings and charcoal, or any porous substance which may enable the mixture of alcohol and water to take a very large surface. This mixture passes down through these shavings, and through air-holes in the inside, and in that way the alcohol is oxidized to acetic acid. As a general thing there is first a certain amount

of vinegar of the strength made on one generator, and then by the addition of more whiskey on the second generator a higher percentage of acetic acid is obtained. The product contains acetic acid, the amylic ethers, and a number of unknown compounds. It has a residue but is practically vinegar.

The product of the other process, after distillation, was purified; a certain amount of whiskey was added, and it was again poured over shavings through generators—not the generators through which the ethylic vinegar was made, because it was the object to get the white alcohol. These generators oxidized that portion of the whiskey last added. It is true that in large quantities of mash the fermentation is not equal and uniform through the entire mass; some part commences at the period of vinous fermentation before the rest does; and when
41 the first part reaches the end of the vinous fermentation, and commences the acetic fermentation, some other part of the same mash might be still in the vinous fermentation. When the acetic fermentation has commenced, the mash may be in such a condition that alcohol can be distilled from it. I believe there would be no alcohol produced by distillation as soon as acetic acid was present: there might be alcohol found, but the acetic acid, which is present, would take up the alcohol. While, as yet, there was some portion of the mash in the condition of vinous fermentation, although some might have reached the acetic fermentation, alcohol could be produced. I am almost certain that, as a matter of fact, in all cases the molasses mash which was sent over to the still in this case, was in the complete acetic fermentation, and that there was no part of the mash yet in the vinous fermentation. I am almost certain that there was no alcohol left in the vinegar which came to this distillery; that all had been converted in the generators into vinegar. The mash from the fermenting-tubs passes into the generators before it goes to the still; the generators are where the vinegar, the acetic acid, is generated—at Wagner and Hofmeister's place. When it came out of the generators there was no alcohol in it; nothing but acetic acid, and such other substances as give vinegar its peculiar flavor. What went to this still was a mash which had gone through the process of acetic fermentation; and that process of acetic fermentation was complete. There is a stage of fermentation beyond acetic fermentation. I call that stage complete oxidation; that stage had been reached almost in all instances before this material went to the still. The product of molasses mash, going through the vinous fermentation, if the vinous fermentation was not complete, would retain, by the time it reached the still, traces of the original presence of molasses; also traces of the action of fermentation on molasses. It would smell as molasses which had been previously converted into acetic acid. The product of the fermentation of molasses, if it were distilled after the vinous
42 fermentation was complete, would develope the distinct odor of rum; that is to say, the distinct odor which would be developed in the vapor of the vinous fermentation of molasses by the process of the distillation into rum. There is an odor developed by distillation of vinous fermentation peculiar to the presence of alcohol. I could in that way determine the presence of alcohol; that odor would not be exactly the same as, but very similar to, the odor developed by distillation of a molasses mash which had entirely completed the vinous fermentation; the characteristics of the smell are about the same, and yet decidedly different.

And on cross-examination, said witness testified:

That the process at Wagner and Hofmeister's place was as follows: Molasses was diluted with water, yeast was added, and it was fermented; the fluid was then filtered through charcoal; it had six per cent. alcohol before filtering; that was practically the end of vinous fermentation; after filtering it had alcohol in it; it was then mixed with vinegar and put through generators; in the generators the air would oxidize the alcohol, and take two equivalents of hydrogen from the alcohol and add two equivalents of oxygen, and thus produce acetic acid; the generators have shavings, &c., to give large surface of air to the alcohol to facilitate oxidation. Vinegar is diluted acetic acid. If the vinous fermentation is not complete, most of the sugar retained in the substance would go into the generator and into the vinegar, but the product would be acetic acid; there would be no alcohol in it, but there might be a trace of sugar in it, because of the incomplete vinous fermentation. Witness analyzed the product of the generators at Wagner and Hofmeister's place, and never found any trace of alcohol in it; he instructed them not to allow the vinegar to run clear, but turbid from the generators; if turbid it shows that there is no alcohol in it. The witness produced a liquid and testified that it was the liquid as it came out of the generators at Wagner and Hofmeister's, that it contained no alcohol, but it was really vinegar; that such liquid was sent to No. 3 Abattoir Place, and there distilled to re-
43 move the impurities; that this liquid was bitter and had salts in it; that the impurities gave it color; that no one would buy it as vinegar, and that it was therefore distilled to purify it; that this process had been known for a long time, and was practiced in England; that the result of the distillation was purified vinegar; that no alcohol can be produced by the distilling of that impure vinegar; that by the distillation, the acetic acid goes off in vapor as acetic acid, leaving the impurities behind; that if there was sugar in the impure vinegar, it would pass over with the vinegar and be found in the product.

Witness produced another liquid and testified that it was the product of the still—a weak, purified vinegar—too weak for the market, and that it had fusel oil or rum oil in it, which had to be removed; that it was taken back to Wagner and Hofmeister's, who added whiskey to it and put it into the generators to convert the alcohol thus added into acetic acid, to make it stronger than before and to remove the smell of the fusel oil; that then it was ready for the market; that fusel oil was amylic alcohol and contains ether; that there was no alcohol in the fusel oil; that fusel oil is produced by fermentation from molasses, and has a penetrating smell, while alcohol has almost no smell; that the smell in rum distilleries comes from fusel oil, and not from alcohol; that at Wagner and Hofmeister's fusel oil was produced during the fermentation, and during the acidification acetic acid would combine with the fusel oil and make crude ether, which would be contained in the impure vinegar; that the distillation at No. 3 Abattoir Place would set the fusel oil free, and the distillation of the impure vinegar at the latter place would therefore create a smell of fusel oil, the same smell found in rum distilleries; that bottles No. 1 and 2 produced to witness Beatty had been filled by this witness; that bottle No. 1 contained Croton water and four drops of fusel oil, no alcohol, and bottle No. 2 contained Croton water and eight drops of fusel oil and no alcohol; that witness frequently analyzed the product of
44 the still at No. 3 Abattoir Place, and never found alcohol in it; that in a mash to produce alcohol, the sugar must be fermented.

Further to maintain the issues on their part, the plaintiffs called as a witness LOUIS HOFMEISTER, who, being duly sworn, testified:

That he is a vinegar-maker. The still was made under directions of the witness and Wagner, his partner, and Frerichs. Frerichs paid for the still. Wagner and Hofmeister advanced him part of the money. It was Frerichs' idea to make the vinegar this way, and he consulted Endemann first, and then proposed it to Wagner and Hofmeister. No whiskey was put into the impure vinegar before it went to No. 3 Abattoir Place.

And on cross-examination, said witness tes'fied that Wagner and Hofmeister gave Frerichs two cents a gallon for distilling the vinegar, he paying all expenses: that he bought and paid for the still, and that they sent nothing to Frerichs but impure vinegar.

The testimony being closed, thereupon the said attorney for the claimant moved the court to direct a verdict for the claimant.

The attorney for the United States then and there objected to such direction, and requested the court to submit the following questions to the jury:

I. Whether Wagner and Hofmeister were not distillers under section 3247 of the Revised Statutes of the United States, and whether the still in question was not, in contemplation of law, under that section, in their possession or use?

II. Whether, under section 3247, Frerichs, having in his possession or use the still in question, was not the principal in the making or keeping of mash, wort, or *mash*, and thereby a distiller?

III. Whether, in view of the combination or partnership between Wagner and Hofmeister and Frerichs, they were not all parties to the production, by the fermentation of molasses, of distilled spirits, or spirits, or alcohol, or alcoholic spirits, under section 3248, and whether each or all did not become distillers under section 3247 and section 3281?

Said attorney, then and there, also moved the court to submit the case to the jury, on the ground that section 3282 prohibits the business carried on by Wagner and Hofmeister and Frerichs, and that the use of a still in that business places each and all under the definition in section 3247, and subjects them to the provisions of section 3281.

The said attorney for the United States, then and there, also moved the court to direct a verdict for the plaintiffs.

Each of which requests, and said motion of said attorney of the United States, was, then and there, denied by the court, and said motion of said attorney for said claimant was then and there granted.

To each of which rulings, and to said direction, said attorney for the United States then and there duly excepted.

The court thereupon directed the jury to render a verdict for the claimant, upon the issues created by the information, and the claim and answer herein; and the jury then and there, under the direction of the court, rendered their verdict accordingly.

The attorney for the United States, then and there, moved the court to cause the entry of a certificate that there was reasonable cause of and for the seizure aforesaid.

And the court thereupon, on motion of claimants' attorney, directed a commissioner to take further evidence bearing on the said motion.

And thereafter a report was made by said commissioner of the evidence so taken, to said court; upon the taking of which, the attorney for said claimant, called FREDERICK FRERICHS, the claimant, as a witness in his own behalf, who, having been duly sworn, testified:

That he is said claimant; that he put up the still at No. 3 Abattoir Place, about the 1st of April, 1876; on the same day he registered it in the collector's office; that before putting it up, he had seen
46 Collector Coster several times about it; that he first saw him about it about six weeks before the still was put up, at the collector's office; that he then asked the collector whether it would be allowed to a vinegar manufacturer to ferment any liquid, grape, grape-sugar, corn-starch, molasses, cider, wine, or any kind of mash for the purpose of manufacturing vinegar; that said collector told him it would be against the law; that witness further asked said collector whether, if vinegar had been produced, it would be lawful to distill it for the purpose of purifying or whitening it; that said collector told him that there was no law against such distillation, if witness would first register the still at his office; that witness called upon the collector again about three weeks before the still was put up, at the same place, having Messrs. Wagner and Hofmeister with him upon that occasion; that witness then told the collector that he had been to the supervisor and asked him whether it would be allowed to a vinegar manufacturer to ferment grape-sugar, &c., for the purpose of manufacturing vinegar, and that the supervisor had told witness that it was perfectly lawful so to do; that he then further told said collector that the supervisor had told witness that he could distill vinegar for the purpose of purifying and whitening it; that the supervisor had said that the collector must have misunderstood the witness about the distilling, and that witness should state the facts over again to the collector, and ask him if it would be lawful to distill vinegar; that Collector Coster then answered witness that it would be lawful, although he was not certain; that the collector then looked over his books, and said that as witness had been to the supervisor, there was no need of coming there; that witness then informed him that Wagner and Hofmeister and himself were going to invest money in the business, and that none of them intended to do so unless they were certain that it was lawful to manufacture such a vinegar; that said Coster then answered that he was certain about it, that he had not taken the matter correctly at first; that such a still
47 could not be put on the same premises where the mash was; that witness informed him that it was not their intention so to do; that witness was to run the distillery, and Wagner and Hofmeister were to manufacture the vinegar, and that thereupon said collector told witness that he might put up a still and manufacture such vinegar; that he must come to his office to register the still; that at the same interview witness told the collector that he was going to make a contract with Wagner and Hofmeister, and that they were to pay him so much a gallon for distilling their vinegar.

That before he saw Collector Coster, he talked with Deputy Collector Brundage, in relation to putting up the still, two or three times; that he asked him about the same thing, and he told him that if he was a vinegar manufacturer and put mash on his premises he would seize the place right away; that witness called upon Supervisor Sewell, in Cedar street, near Broadway, New York City, about one week after he had first seen Collector Coster, and that the supervisor told him that a vinegar manufacturer had a right to ferment anything for the purpose of manufacturing vinegar, and that a person could distill such vinegar, but the distillation could not be done by the same firm or upon the same premises; that the supervisor told witness to go back to the collector and explain it to him, as he must have misunderstood witness; that about two weeks after putting up the still he one day found Dep-

uty Collectors Beatty, Brundage, and Sheals there, who said to witness that he was making rum; that witness told them *them* there was no rum there; that the smell was that of fusel oil, and asked them to investigate and examine; that they then took samples, and told him that they would take them to the office to have them tried; that afterwards they returned and said there was no rum in it, but that it smelt like rum, but that they thought it would be better for witness to go to the collector's office and explain the whole process to him, and to bring something from Dr. Endemann; that witness the next day went to the collector's office and delivered him a letter written by Dr. Ende-
48 mann; the letter was written on "board of health" paper on one page; that witness then asked Collector Coster if he wanted any more information or explanation about the distilling of the vinegar, or any more information from Dr. Endemann, from whom he had there a certificate of the examinations he had made of the vinegar at many different occasions; that said Coster told witness that he knew that they were not making either rum or alcohol or anything unlawful in witness' place, and he was sorry that Deputy Collector Beatty had, of his own accord, broken into witness' place; that the letter had been written by Dr. Endemann at his office down town at witness' request; that the deputy collectors from that time came and looked in; that they told witness that they had taken the samples to one McCabe, and that they found out that there was no alcohol in them.

And on cross-examination said witness testified:

That he heard from his man that the deputy collectors were at the place every day; that he has been experimenting for quite a while at home for four or five years; that he did not have a registered still for the manufacture of spirits; he never made any spirits at all, except distilled vinegar on a small scale; that he may have got some alcohol out of it; he does not know of any way to distill vinegar and get alcohol out of it; if he wanted to find the percentage of alcohol in molasses he distilled the molasses mash, and saw how much alcohol there was in it; that was to find the vinegar strength of the molasses; the value of molasses for the manufacture of vinegar depends upon the quantity of alcohol that molasses will produce; there is no other way of testing the value of molasses for making vinegar if you want to find out quick; that he never tried to use a still in the manufacture of vinegar before using the still which he erected at 3 Abattoir Place. Before that he fermented molasses mash, grape sugar, and starch mash, and turned it over shavings, the same as Wagner and Hofmeister do; after it had run through generators he cleared it by leaching it through ani-
49 mal charcoal, then he sold it; he had done that for about four years; he bought the alcohol vinegar he used in that process; in the process which he used in connection with Wagner and Hofmeister he used less alcohol than would otherwise be necessary.

When he saw Collector Coster in January, 1876, he asked him if it was lawful for a vinegar manufacturer to ferment any mash, cornstarch, or grape-sugar, or molasses, or vinegar for the purpose of making vinegar. He asked him if a man was allowed to distill such vinegar. He said yes, but not on the same premises with the vinegar manufacturer; that he had his own place where he was making vinegar, and he kept that place up.

In experimenting during the four years he used a small kettle, which would hold about half a pint or a pint of mash at most; that after he had seen Collector Coster, and before he saw the supervisor, he pro-

posed the business to Wagner & Hofmeister; they advanced about one hundred dollars for the purchase of the still. If the molasses mash, made by Wagner & Hofmeister, had been sent to the still before it was run through the generators it would make a poor quality of rum. That he could distill about a thousand gallons of vinegar with this still in twenty-four hours. If the generators worked right he might get along with half as much tax-paid alcohol as by the other process. That they saved as much as twenty-five per cent.; the generators did not work all right, except for the first four weeks; while they worked right there was a saving of fifty per cent. of tax-paid alcohol at first; that he mentioned to Wagner & Hofmeister that the process would save about twenty-five per cent. of alcohol; that their object was to get a better vinegar and make a little more; that he was first put in the way of this by seeing Cross & Blackwell's pickles, which are in distilled vinegar and will keep four years, while in vinegar here manufactured from alcohol they would keep only for three months; that Collector Coster first told him to have the still at a different place from the place where the mash was fermented; that then he said that
50 he was going to do it that way; that had not been previously talked of between himself and Wagner & Hofmeister; that he said he was going to do it that way because he thought of running a vinegar distillery any way; if not with Wagner & Hofmeister it would have been with somebody else.

Doctor Endemann went to Washington after the seizure, and telegraphed as follows:

"Officers here are disposed to release establishment, provided you will waive any claims for damages, and hereafter keep records showing from whom spirits used in the manufacture were purchased. Will you consent?"

That he answered "We are satisfied," and Wagner & Hofmeister signed it, as well as he; they sent the answer to Dr. Endemann in Washington.

That he may have said to Mr. Brundage in May that he had no objection to the property being under seizure while some one he sent to Washington was explaining the whole process, so that the legality of this mode of business might be settled in Washington; he didn't recollect it; that he thinks this process of distilling molasses after acetic fermentation has set in is an old one, but a new one in this country; that he had never known it before; it originated with him; he took a good deal of pains to explain to the officers, from time to time, how it was done, so they could determine whether it was lawful. So far as he knows he is the only person carrying on this process of making vinegar; that he himself saw the deputy collectors take away samples but once, about two weeks before the seizure, at the time they were going to seize first; that he had first called upon the collector in the middle of January.

And on redirect examination said witness further testified:

That he bought and paid for the still, copper and all; that he borrowed one hundred dollars of Wagner and Hofmeister for the purpose of paying for the still, which he paid back to them the next week; that he never produced rum or alcohol at that still; that he sent Dr. Endemann to Washington at the suggestion of the representative of
51 the supervisor, who asked him to do so that Dr. Endemann might give the general office there a fair explanation of the whole process of making vinegar and distilling it; this was after the seizure.

That after the dispatch was received from Dr. Endemann he was arrested on a criminal charge in connection with this matter, and had to give bail; after that he went with Mr. Salomon, his counsel, to the district attorney's office to arrange about the release of the property seized in pursuance of that telegram. Mr. Sherman, the assistant district attorney, required, as a condition for the release, that he and Wagner & Hofmeister should sign a certificate of probable cause. Mr. Salomon then stated to Mr. Sherman that if the government would release the property, and return it to him (witness) at once, he would be willing to waive the damages which he had sustained, but would not be willing to sign a paper which he would confess that the officers of the government had a right to seize. Mr. Sherman thereupon answered that he had no authority so to settle the matter; that he only had authority to settle by receiving such a certificate of probable cause. That after the seizure, in consequence of a note received from the representative of the supervisor, he went to the Cedar street office. The representative of the supervisor asked him if he had received his letter advising him to send Dr. Endemann to Washington to explain the process of manufacturing this vinegar and distilling it; that he said he had, and that Dr. Endemann had already gone to Washington. He called also with Wagner & Hofmeister at the supervisor's office because Mr. Sheals had said that the seizure was made through the Cedar st. office; that he was told there by the representative of the supervisor that the seizure occurred because, whether I had made rum there or vinegar, I was violating the law; that it was not lawful to distill vinegar without permission from Washington.

And the attorney for said claimant further called for a witness HERMANN ENDEMANN, who, having been duly sworn, testified:

That before the seizure he wrote a statement or letter to the
52 collector, at the request of Frerichs, concerning the process of manufacturing and distilling this vinegar, which he delivered to Frerichs about the first day of May, 1876; that he had no copy of the letter, but could give the substance of it. It is as follows:

CLAIMANT'S EXHIBIT 2.

"H. Endemann, analytical and consulting chemist, New York, on or about the 1st of May, to the collector of the 4th district:

"DEAR SIR: At the request of F. Frerichs, distiller at 3 Abattoir Place, and others, I have made a series of examinations of both raw and distilled vinegar as produced and used at this place for alcohol. Some of the samples were taken by myself, while others were represented to me as coming from this place.

"Said samples of vinegar never contained the slightest amount of alcohol.

"The peculiar smell of the vinegar is due to the presence of free fusel oil, with which the vinegar is highly charged, both before and after it is distilled, but which, before distillation, exists in a combined state, and only after distillation acquires its well known odor.

"Respectfully yours,

"H. ENDEMANN."

And on cross-examination said witness testified:

That he made this paper (Claimant's Exhibit 2) about the first of May.

The copy (Claimant's Exhibit 2) he made yesterday; that he made no memorandum at the time of this letter; it was addressed to the collector of the fourth district; to the best of his recollection it was headed in this way (referring to Claimant's Exhibit 2), on this letter-head paper; that he said he had made a series of examinations; he was sure of that; that he said that he had made examinations of both raw and distilled vinegar produced at this place; that he distinctly remembered to have said so in the letter; that he was sure he said some of the samples were taken by himself; that he was sure he said something in the letter about the presence of free fusel oil; that his recollection of that is as distinct as anything else that occurred in reference to this matter, and he is absolutely certain that he mentioned the presence of free fusel oil being the cause of the smell of alcohol in this vinegar; that he said it was after distillation that the vinegar acquired the odor of fusel oil, or that in substance; he is sure of that—as sure as of anything else that has occurred in reference to this matter; that he wrote no more than one letter of that sort; that he drew up this (Claimant's Exhibit 2) according to his best recollection as to the substance of the other letter; that he had written a letter of which "U. S. Exhibit No. 3," produced by the attorney of the United States, was a copy.

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And on redirect examination said witness testified:

That he wrote the letter marked "U. S. Exhibit No. 3," at Wagner & Hofmeister's place, at the suggestion of one of the deputy collectors; that this was not the same letter which he wrote in his office and handed to Frerichs, first above-mentioned by him.

And the attorney for said claimant further called as a witness ANTHONY MITZENIUS, who, having been duly sworn, testified:

That he was an engineer; that he was in the employ of the claimant at No. 3 Abattoir Place from the day the still was put up until the day of the seizure; that there *that there* were two engineers employed, and that witness worked during the daytime, the other during the nighttime generally; that he saw revenue officers there frequently, and remembered Beatty, Brundage, and Sheals, deputy collectors, the latter coming there quite often; and that he saw them take away samples, which they got from the worm and also out of the barrels, which came from Wagner & Hofmeister's place.

Further to sustain the said motion, said plaintiffs called as a witness CHARLES R. COSTER, who, being duly sworn, testified as follows:

That he was collector of internal revenue in May, 1876, and prior thereto, in the fourth collection district, where the seizure in question occurred; that he knew the locality, but had never been on the premises while occupied by Frerichs. Quite a number of seizures of illicit rum distilleries had occurred in the locality where this seizure occurred in Abattoir Place while witness was collector. The locality was well adapted for such purpose, he supposed, from the number located there; that had been his judgment about that locality while he had been collector; he considered it a very dangerous locality, and gave it more particular attention than any other. His judgment was founded on the fact that he had seized a number of illicit stills there. He had visited the locality personally, and thought the nature of the population was such as to make it dangerous for revenue officers to go there; they had taken property seized away from the officers and the police. There was an alley which ran to the Hudson River in the rear

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of the houses on Abattoir Place; it had always been supposed, in fact evidence came, that the product of the illicit stills was taken off in boats at the end of the alley at an adjoining dock. Years before that it had been a suspicious neighborhood.

A government officer was found floating in one of the cisterns of an old illicit still there, dead. He spoke of a time prior to this seizure; three or four years prior to the seizure.

He made this seizure on the whole statement of facts which originally came to him. The first ground for making the seizure was that the means which Frerichs was using in distilling were such that witness believed he could not distill the mash or fermented liquor which he had there, or had brought there, without, at some time in this process, generating alcohol there immediately, or during the process; secondly, that under the cloak of this business the direct distillation of illicit spirits could be carried on without the proper regulations of law governing the distillation of spirits; these are the principal reasons. The suspicious nature of the locality in which Frerichs had set up this still also operated greatly on witness' mind at the time.

55 Some time during the year 1875, in April or May, Frerichs came to his office and said he was a manufacturer of vinegar, or was about to manufacture vinegar; he asked him if a still could be used by him on the premises for distilling his fermented liquor made in the vinegar factory. Witness told him the law did not permit it; asked him if this was a new business he was going to conduct, and if it had been done in any other part of the district by any other vinegar manufacturers, and he said no. Witness told him, referring to section 3282, that no fermented liquid could be distilled except in a regular distillery, and that he would be liable under section 3147 or 3148. Frerichs did not seem satisfied with witness's opinion, and to close the conversation witness advised him to apply to the Commissioner of Internal Revenue and the supervisor; that his opinion was not final on any such questions, but subject to their final opinion. He next saw Frerichs in February, 1876, about a year after the first occasion.

He then said he proposed to set up the still and use the product made by another vinegar manufacturer, giving as a reason that he wished to overcome that part of the section where he could not have the still on his own premises. He said he was to work in connection with them; they were to make the fermented liquor and he was to distill it. He did not call it vinegar, but fermented liquor. Witness understood it was fermented from molasses. Told him he only overcame part of the objections mentioned, and that by distilling the product of another manufacturer he would become a distiller, and be liable under the law. Witness again referred him to the supervisor, as his opinion was not final. The next time he saw Frerichs he came to witness's office with Mr. Hofmeister, whom he introduced as the person who was to make the product he was to distill, and said he had seen the supervisor, who said it was all right; and in a joking way he added, so long as they did not make any rum there. Witness told him that if the supervisor said it was all right, he would not make any further ob-

56 jection; told him it would be necessary for him to register the still; that was all that passed at that time, because they had exhausted the subject of his process before. Witness then understood that the supervisor had passed on the question, and he took it as evidence that he might be wrong in his opinion. No explanation was given to him before the registry of the still that the product was to be entirely of vinegar. Prior to the registry of this still this process of vinegar-

making had never been put in use in his district, and had not, to his knowledge, elsewhere. Frerichs stated in his first interview that such a system had never been used before. After witness learned where the still was to be set up, he instructed Mr. Beatty, one of his deputies, and the deputy who had charge at that locality, to look after it. On the 13th of April Mr. Beatty examined the place and took a sample in a bottle, which he brought to witness's office. On the day after Frerichs called and gave him a certificate from Dr. Endemann.

The certificate is U. S. Exhibit 3, heretofore produced, as follows:

"NEW YORK, *April 13th*, 1876.

"I hereby certify that I have analyzed the vinegar which is distilled by Fred. Frerichs at No. 3 Abattoir Place, of this city, and which, to my best belief, has been taken from a lot now stored at said place, and found this vinegar to be perfectly free from alcohol.

"H. ENDEMANN, PH. D.,

"*Analytical and Consulting Chemist, H. 458 West 35th St., N. Y. City.*"

Not other paper on the subject was ever given to him.

Witness did not examine the samples because of the receipt of the certificate.

He threw the bottle aside and never found it until the other day. Mr. Beatty made some remarks about the contents of the bottle (he had,
57 up to that time, been relied upon by witness as an expert in reference to the seizure of illicit rum distilleries) as to whether there was mash, rum, or spirits discovered. He was the officer that represented witness in making all the seizures. He told witness he thought it smelled very much of rum. About two weeks after that examination, on the 13th of April, Mr. Beatty went again to No. 3 Abattoir Place, and reported to witness that he had found the place closed, and had entered through the sky-light, and examined the place, and was of the opinion that they were making rum there, from the smell, and that he had seized the place.

Witness told him he did not think they had sufficient evidence to proceed, and that he should release the place; he did so.

After this seisure, and prior to the information upon which witness afterward seized the place, he learned that Mr. Bundage, one of his deputies, deputy collector Hawley, and revenue agents McLeer and Hale had been to Wagner & Hofmeister's factory, and talked about it there. Mr. Brundage told witness that the product of Wagner & Hofmeister's factory, which they carried to Frerichs, was capable of generating rum by distillation. They told witness the product was carried to Frerichs in large hogsheads and barrels; he did not know the distance between Wagner & Hofmeister's place and Frerichs' place; he had never been at Wagner & Hofmeister's place; he did not apply at any time after Frerichs stated to him that the supervisor had stated that his process was all right, to the supervisor for any information on the subject. Witness was, and has been up to now, under the impression that Frerichs showed him a paper from the supervisor, in effect, as he said, the supervisor had decided. For that reason witness did not apply to the supervisor or Commissioner about it. At the time of the seizure Mr. McLeer was a revenue agent, specially appointed by the Commissioner of Internal Revenue, assigned to the supervisor's district, and under the direction of the supervisor, witness presumed; he had his office with the supervisor.

58 About the 20th day of May witness was told Mr. McLeer

came to his office during his absence and obtained permission to be accompanied by a deputy to examine Mr. Frerich's place. Mr. Sheals, deputy collector of that division, was sent with him. On the following Monday Mr. McLeer called at witness's office; he came into his private office, and witness asked him what had been the result of his examination the day before. He said the business conducted by Frerichs was all wrong, and that this process of distillation of the product of Wagner & Hofmeister's vinegar factory was causing a loss to the government by their generating alcohol in this process, whereby the tax was saved, and the government defrauded out of the tax on spirits, which should be used for that purpose. He requested witness to have the place seized, and the matter brought to the attention of the Commissioner of Internal Revenue and the law officers of the government. Witness then directed this seizure to be made. The day after the seizure Frerichs called at his office, and witness told him why he had made the seizure. He told him they had seized the property on the ground that some time during the process he had for distilling fermented liquor, alcohol was generated; that that was the ground upon which the seizure was made. Witness thinks there were samples taken at the time of the seizure, but did not have them in his possession. He supposed Mr. McLeer had the samples.

And on cross-examination said witness testified as follows:

Prior to this seizure, none were made at No. 3 Abatto'r Place, but in the locality there; there had been a seizure made on a lot nearly in the rear of it, and one about in the same block; this may have been six months or a year previously; Frerichs had nothing to do with that matter. When Frerichs first came to witness he did not ask whether he could distill vinegar upon the same premises that he made it on, of the molasses; he asked witness if he could distill fermented liquor that they produced for the manufacture of vinegar, as witness under-
59 stood him. Witness told him that although vinegar-makers were allowed to have fermented liquors on their premises, no fermented liquor could be distilled except in an authorized distillery. Thought he read him section 3282 of the Revised Statutes. He asked witness previously whether he could put up a still on the premises where vinegar was manufactured, and witness also read him the section forbidding such setting up of a still. Witness told him to go to the supervisor or apply to the Commissioner of Internal Revenue; he told him so because he seemed dissatisfied with witness' opinion on the subject. The last time Frerichs came to witness, before setting up the still, he told him he was going to set up this still in connection with a firm of vinegar manufacturers, and to use liquid they fermented there, and pass it through his still for the purpose of distillation, whereby he was to make, witness presumed, vinegar. That was all he said, except as witness had heretofore stated. The last time Frerichs came to him before setting up the still, he told him he was going to use the product of Wagner & Hofmeister's vinegar factory. Witness never personally went to either Wagner & Hofmeister's place, or to No. 3 Abattoir Place. The newness of this process was in the distillation of such a fermented liquor; it had never been done before in the district. Witness' action in making the seizure was based upon the previous examinations made by his own officers and the revenue agents. The facts disclosed to him by them were the statement of McLeer's examination of the premises; that in the process used by Frerichs, and by the nature of the materials used, alcohol must at some time be generated, and his own opinion that this was the

case, and that such fermented liquids could not be used at other than a regular authorized distillery; and the fact that this was the proper way of bringing the matter to the attention of the proper officers of the government about making seizures, so that the matter could be definitely and properly decided. The only three officers that made statements to him personally were Beatty, Brundage, and McLeer;
60 Sheals might have said something to him in regard to the suspicious nature of the case at different times.

Beatty had told him when he brought the sample he had mentioned; that in his opinion there was rum in it, and when he afterwards made the seizure which witness countermanded, he told him he thought there was rum being made there; he told him no other fact. Witness had also taken Mr. Brundage's opinion as to the character of the stuff. Mr. Beatty's opinion was not expressed to him before he had received Dr. Endemann's letter, but after; about two weeks after Beatty had obtained that sample, and had gone into the place through the sky-light; about two weeks after the 13th of April. Brundage communicated to witness the fact that he had seen in the carts of Wagner & Hofmeister that was going down to Frerichs' place, as he supposed, a product which, in his opinion, he thought could be distilled into rum, or the distillation of which would produce rum. Witness never instructed the officers to take the product of Wagner & Hofmeister's place, and which was brought to Frerichs' place, and subject it to a chemical examination to ascertain what there was in it. He never instructed his officers to take a sample of the product of Frerichs' still and subject it to an examination to ascertain what it was.

He did not ask Mr. McLeer when, in the course of the process, the alcohol was produced that went into this vinegar, but as witness then recollected he explained the process at that time. He said the nature of the liquid which was taken to Frerichs' distillery was such that, by distilling it, during the process he thought the passing over the worm there could not help but be alcohol generated, in violation of section 3147 and 3148. That by this means they avoided the use of alcohol in making this product which came from Frerichs' still, and that the government was being defrauded by that means out of the tax on distilled spirits. Witness never saw Frerichs' apparatus. Before he was collector he was in the stock-brokerage business; previous to that he was a clerk in a dry-goods store; he was in the Army during the war,
61 and before he became collector he had a large farm. He had never been a distiller, nor a chemist, and never ran a still.

And the said attorney for the United States further called as a witness EDWARD MCLEER, who, having been duly sworn, testifies:

That for about two years he had been and then was an internal revenue agent; that before that he had been a deputy collector and assistant assessor of internal revenue in Brooklyn and New York; that at the time of the seizure in this case he was assigned to Supervisor Foulke; that he first visited the premises, No. 3 Abbatoir Place, about the 19th day of May, 1876; that before that he went to the factory of Wagner & Hofmeister, accompanied by Hale and Ryan, both connected with the supervisor's office, and Latta and Sheals, of Coster's office; that at that time they went through the factory accompanied by Mr. Wagner, who took them first to the cellar and there showed them some fermenting tubs, in which there was molasses mash; from there to the first, second, and third floors, explaining the process as he went along; how, after the mash was fermented in the cellar, it was pumped into

other vessels on the first, second, and third floors, containing charcoal and shavings, after which it was put into vinegar generators, and from that barrelled and taken to No. 3 Abattoir Place, Frerichs' still; that there he said it was distilled, and then brought back to his factory; that said Wagner then went with them to No. 3 Abattoir Place, where they found the still in full blast; and that no other examination took place by him before the seizure. And on cross-examination witness testified:

That he had never been a distiller; that before going into the government service he had been a clerk in the auditor's office in Brooklyn; had been in the Army and worked at sailmaking; that he made no examination at Frerichs' place of either the substance which went into the still or that which came out of it; that the seizure was made at his request.

62 And the said attorney for the United States further called as a witness, Lawrence Beatty, who, having been duly sworn, testified:

That he was a deputy collector of internal revenue, and made the seizure in the case; that he was at Frerichs' place twice before the seizure; that the first time he went there he took a sample of the product of the still to the collector's office, and reported to the collector that in his opinion they were producing alcohol from the process they had there; that he made no examination at all of said sample, and derived his views that they were making alcohol there from the smell of the place and of the sample; that he made no examination of the product of Wagner & Hofmeister's place, taken to Frerichs' place, or of the still itself prior to the seizure; that about two weeks before the seizure he went there again, and finding the place closed sent a man through the sky-light.

And on cross-examination said witness testified:

That he first went to Frerichs' place on the 13th day of April, and that Mr. Sheals and two other men went with him at that time; that he next went there about two weeks previous to the 22d day of May; that Sheals and others then went with him; that at this time he sent a man through the sky-light, and then made what he called a detention of the place, leaving a man in charge.

And the said attorney for the claimant further recalled as a witness FREDERICK FRERICHS, who testified:

That he took No. 3 Abattoir Place for his distillery because he could not get any other place with a chimney on ready for the boiler, and because it was cheap rent; that when speaking to the collector of what he was going to distill, he did not call it fermented liquor, but called it vinegar; that on the day when the first seizure, or detention, as it was called, was made, he, Beatty, Brundage, Sheals, and Hofmeister left No. 3 Abattoir Place together, and were going up to Wagner & Hofmeister's factory, when they met Dr. Endemann; that Dr. Endemann made a full explanation to said officers, told them he had made

63 different examinations of the vinegar, and never found any alcohol in it; that the smell was that of fusel oil, and explained to them the whole process; that they then suggested he should write a paper for the collector, which he did at Wagner & Hofmeister's factory, which was handed to one of the deputy collectors.

And the said attorney for the claimant further recalled HERMAN ENDEMANN, who testified:

That he met deputy collector Sheals and some others who were pointed out to him as deputy collectors, and Frerichs, Wagner, and Hofmeister, about two weeks after the putting up of the still in the street; they were coming from Frerichs' and going to Wagner & Hormeister's; that witness then stated to Sheals and the other deputy collectors that he had examined the vinegar several times without finding any alcohol in it; that they informed witness then that they had broken into the place on account of the peculiar rum-smell they had observed on the roof, and that witness thereupon explained to them how it happened that fusel oil was one of the substances produced under the distillation; that they went togother to Wagner & Hofmeister's place, and that he then wrote "U. S. Exhibit No. 3," which he gave to some there to take charge of. Witness further testified that he was chief of the disinfectant bureau of the health department of the city of New York, and had been permanently in that position for about eight years.

And the said attorney for said claimant further called as a witness said LOUIS HOFMEISTER, hereto're sworn and examined, who testified:

That he was present upon the occasion testified to by Dr. Endermann and Frerichs, when they met in the street; that deputy collectors Sheals, Beatty, and three or four others, were present; that they went to Wagner & Hofmeister's factory, where Dr. Endemann wrote a paper.

And thereupon, upon the coming in of the report of sa*i*d commissioner, the motion for a certificate of reasonable cause aforesaid was renewed upon the evidence upon the trial, and the evidence aforesaid taken by said commissioner, and said motion was denied by the
64 court; to which ruling, and the denial of said motion, said attorney for the United States then and there duly excepted.

And thereupon, then and there, the plaintiffs, by said attorney, prayed their bill of exceptions, which is signed and sealed as aforesaid, accordingly.

SAMUEL BLATCHFORD. [L. S.]

Correct.

EDWARD SALOMON.

Correct.

STEWART L. WOODFORD.
(E. B. H.) *U. S. Attorney.*

United States circuit court, southern district of New York.

THE UNITED STATES OF AMERICA,
vs.
LAND, &C., No. 3 ABBATOIR PLACE, NEW YORK CITY.

Afterward, to wit, on the 3d Monday of October, 1878, before the judges of the circuit court aforesaid, at the city of New York, comes the said the United States of America, by Stewart L. Woodford, esq., their attorney, and say that in the record and proceedings aforesaid, and also in giving the final decree aforesaid, there is manifest error in this, to wit, that the court granted the motion of the claimant, by their counsel, to direct a verdict for the claimant, and denied the motion of

the plaintiffs, by their counsel, to direct a verdict of condemnation.

65 Also in this, that the court denied the requests of the plaintiffs by their counsel to submit the following questions to the jury:

"I. Whether Wagner & Hofmeifter were not distillers under section 3247 of the Revised Statutes of the United States, and whether still in question was not, in contemplation of law, under that section, in their possession or use.

"II. Whether, under section 3247, Frerichs, having in his possession or use the still in question, was not the principal in the making or keeping of the mash, wort, or mash, and thereby a distiller.

"III. Whether, in view of the combination or partnership between Wagner & Hofmeister and Frerichs, they were not all parties to the production, by the fermentation of molasses, of distilled spirits, or spirits, or alcohol or alcoholic spirits, under section 3248, and whether each or all did not become distillers under section 3247 and section 3281?"

Also in this, that the court denied the plaintiff's motion, by their counsel, to submit the case to the jury, on the ground that section 3282 prohibited the business carried on by Wagner & Hofmeister and Frerichs, and that the use of a still in that business placed each and all under the definition in section 3247, and subjected them with provisions of section 3281.

Also in this, to wit, upon the coming in of the report of the commissioner appointed by the court to take further evidence bearing on the motion of plaintiffs, by their counsel, for a certificate of reasonable cause, the court denied plaintiff's motion, by their counsel, for a certificate of reasonable cause.

Also in this, to wit, in each particular pointed out by the exceptions taken by said attorney, and this they, the said United States of America, by their attorney, are ready to verify.

Wherefore, they pray that the final decree aforesaid, for the errors aforesaid, may be revoked, annulled, and altogether held for

66 nothing, and that they may be restored to all things which they have lost by occasion of the final decree aforesaid, &c.

STEWART L. WOODFORD,
U. S. Attorney.

Circuit court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
A CERTAIN PIECE OF LAND SITUATE IN THE city of New York, known as No. 3 Abattoir Place, &c.

And afterwards, to wit, on the third Monday of October, 1878, the said Frederick Frerichs, claimant, by Salomon & Burke, his attorneys, freely comes here into court, and says that there is no error either in the record or proceedings aforesaid, or in the giving of the decree aforesaid; and he prays that the said circuit court, before the judges thereof, now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and

that the decree aforesaid, in form aforesaid given, may be in all things affirmed, &c.

SALOMON & BURKE,
Attorneys for the said Frederick Frerichs, Claimant,
No. 4 Wall street, N. Y.

67 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-room, in the city of New York, on Monday, the sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PL'FF IN error,
vs.
HOUSE, LOT, &C., NO. 3 ABATTOIR PLACE, NEW York City, Frederick Frerichs, claimant, defendant in error.

Counsel for the respective parties to the above-entitled cause submit to the court briefs herein.

68 THE UNITED STATES, PLAINTIFF IN error,
vs.
HOUSE, LOT, &C., NO. 3 ABATTOIR PLACE, New York City, &c.

WAITE, Ch. J.:

The issue made below was as to whether the claimant was a distiller of spirits within the meaning of sec. 3247, Revised Statutes, and the first error assigned here is upon the order of the court directing a verdict for the claimant at the close of the evidence on the part of the government. That section of the statute is as follows:

"Every person who produces distilled spirits, or who brews or makes mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller."

69 It cannot be seriously contended that the evidence was sufficient to warrant a jury in finding that the claimant actually produced distilled spirits, or that he brewed or made mash, wort, or wash fit for distillation or the production of spirits, or that he actually separated alcoholic spirits from any fermented substance. All that can be insisted upon by the government is that there was evidence tending to prove that he had in his possession or use a still, and that he kept mash, wort, or wash within the meaning of the statute. The still he had in his possession was put up for the manufacture of acetic acid, and was duly registered as such. About this there is no dispute. To make one in possession of a still a distiller because he keeps mash, wort, or wash, the mash, wort, or wash kept must be such as will produce spirits on distillation. The evidence in this case was clear to the

effect that the substance complained of would not produce distilled spirits. It was intended for the manufacture of vinegar, and
70 when distilled, did not and could not yield spirits. It had already gone through such a process of fermentation in another place, where there was a still, as to render it impossible to convert it, or any part of it, into spirit by distillation or any process of evaporation. This was the uncontradicted testimony of the only witness examined on that subject. The process through which it was to be put by the claimant was only for the purpose of cleansing it of impurities, and thus fitting it for use in the manufacture of vinegar. It was in fact a weak acetic acid mixed with foreign substances, which must be removed before it could be converted into marketable vinegar. One who produces a substance which can be converted into vinegar by the use of a smaller quantity of spirits than is ordinarily employed is not necessarily a distiller of spirits. To become such in law he must actually produce spirits, or keep with the still he uses that which will
71 produce them. Such was not the case here. Had the jury found from the evidence a verdict against the claimant, it would clearly have been the duty of the court, on motion, to set the verdict aside and grant a new trial. Under such circumstances it was not error for the court to direct a verdict in favor of the claimant.

If an order of the district court, refusing a certificate of probable cause under the provisions of section 970 of the Revised Statutes, can be reversed by the circuit court upon a writ of error, it ought not to be done except in a clear case. The evidence which has been embodied in this bill of exceptions is not such as to satisfy me that any error was committed in this particular.

The judgment of the district court is affirmed.

(Endorsed:) U. S. vs. House, Lot, &c., No. 3 Abattoir Pl., N. Y. City. Opinion. Waite, Ch. J. U. S. circuit court. Filed Jul. 31, 1879. John I. Davenport, clerk.

72 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on the 31st day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

THE UNITED STATES OF AMERICA
against
A CERTAIN PIECE OF LAND SITUATED IN the city of New York, known as No. 3 Abattoir Place, and the buildings thereon; and also one steam boiler and certain other personal property thereon, seized for alleged violation of the revenue laws of the United States on the 22 day of May, 1876, by Charles R. Coster, collector of internal revenue of the said United States, Frederick Fre'ichs, claimant, defendant in error.

This cause coming on to be heard upon the writ of error issued by this court to the district court of the United States for the southern

district of New York, and upon the return of such writ of error, after hearing Edward B. Hill, esq'r., assistant United States attorney for the plaintiff in error, and Edward Salomon, esq'r., for the above-named claimant, the defendant in error, it is

Ordered, that the judgment of the said district court for the southern district of New York rendered herein, and the order denying the motion for a certificate of reasonable cause of seizure, entered at
73 the foot of such judgment, be, and the same hereby are, in all things, affirmed.

(Signed) M. R. WAITE.

We consent to the entry of the above order, nunc pro tunc, as of July 31, 1879.

N. Y., Sept. 23, 1879.

STEWART L. WOODFORD,
E. B. H. *U. S. Attorney.*

(Endorsed:) U. S. circuit court, southern dist. of New York. The United States of America, pl'ff in error, vs. A certain piece of land known as No. 3 Abattoir Place, one steam boiler, &c., Frederick Fre'ichs, claimant, def'ts in error. Order affirming judgment, &c. U. S. circuit court. Filed Oct. 8, 1879, nunc pro tunc, as of July 31, 1879. John I. Davenport, clerk.

74 Supreme Court of the United States.

THE UNITED STATES
vs.
LAND, &C., 3 ABBATOIR PLACE, NEW YORK CITY.

Of October term, in the year of our Lord one thousand eight hundred and seventy-nine.

Afterward, to wit, on the 2d Monday of October, 1879, before the judges of the Supreme Court aforesaid, at the Capit*al* at the city of Washington, comes the said the United States of America, by Stewart L. Woodford, esq., their attorney, and say that in the record and proceedings aforesaid, and also in giving the final decree aforesaid, there is manifest error in this, to wit:

That the court granted the motion of the claimant, and denied the motion of the plaintiffs, by their counsel, to direct a verdict of condemnation.

Also in this, that the court denied the requests of the plaint-
75 iffs, by their counsel, to submit the following questions to the jury:

"I. Whether Wagner & Hofmeifter were not distillers under section 3247 of the Revised Statutes of the United States, and whether still in question was not, in contemplation of law, under that section, in their possession or use.

"II. Whether, under section 3247, Frerichs, having in his possession or use the still in question, was not the principal in the making or keeping of the mash, wort, or mash, and thereby a distiller.

"III. Whether, in view of the combination or partnership between Wagner and Hofmeister and Frerichs, they were not at all parties to the production by the fermentation of molasses, of distilled spirits, or

spirits, or alcohol or alcoholic spirits, under section 3248, and whether each or all did not become distillers under section 3247 and section 3281."

Also in this, that the court denied the plaintiff's motion, by
76 their counsel, to submit the case to the jury, on the ground that section 3282 prohibited the business carried on by Wagner & Hofmeister and Frerichs, and that the use of a still in that business placed each and all under the definition in section 3247, and subjected them with provisions of section 3281; also in this, to wit, upon the coming in of the report of the commissioner appointed by the court to take further evidence bearing on the motion of plaintiffs, by their counsel, for a certificate of reasonable cause, the court denied plaintiff's motion, by their counsel, for a certificate of reasonable cause.

Also in this, to wit, in each particular pointed out by the exceptions taken by said attorney, and this they, the said United States of America, by their attorney, are ready to verify.

Wherefore they pray that the final decree aforesaid, for the errors aforesaid, may be revoked, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost
77 by occasion of the final decree aforesaid, &c.

(Endorsed:) The United States of America vs. Land, &c., 3 Abbatoir Place, New York City, assignment of errors. Stewart L. Woodford, U. S. att'y. U. S. circuit court. Filed Oct. 11, 1879. John I. Davenport, clerk.

78 *Affidavit of service of writ of error & citation.*

U. S. Supreme Court.

THE UNITED STATES OF AMERICA
against
HOUSE, LOT, &C., NO. 3 ABATTOIR PLACE, in the city of New York, Frederick Frerichs, claimant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

C. R. Chubbuck, being duly sworn, says he is a clerk in the office of Stewart L. Woodford, United States attorney; that on the 17th day of September, 1870, at 2:00 p. m., he served a copy of the hereto-annexed writ of error & citation upon E. Salomon, att'y for claimant in this action, by delivering said copy to E. Salomon personally, and exhibiting the signature on the original papers to him; and deponent further says he is over eighteen years of age.

C. R. CHUBBUCK.

Sworn to before me this 18th day of September, 1879.
THOMAS GREENWOOD,
Notary Public, No. , N. Y. County.

79 UNITED STATES OF AMERICA, *ss:*

To Frederick Frerichs, claimant of house, lot, &c., No. 3 Abbattoir Place, in the city of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second

Monday of October, eighteen hundred and seventy-nine, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein the United States of America are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated Sept. 16, 1879.

WM. G. CHOATE.

(Endorsed:) U. S. Supreme Court. The United States of America, plaintiffs in error, against House, Lot, &c., No. 3 Abbattoir Place, in the city of New York, Frederick Frerichs, claimant, defendant in error. Citation.

81 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
vs.
A CERTAIN PIECE OF LAND SITUATE IN THE city of New York, known as No. 3 Abbattoir Place, &c., Frederick Frerichs, claimant, defendant in error.

And afterwards, to wit, on the second Monday of October, 1879, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the above-named defendant in error, by his attorney, Edward Salomon, and says that there is no error, either in the record or proceedings aforesaid, in manner and form, as assigned by the plaintiffs in error aforesaid, or in the giving of the judgment aforesaid, and prays that the record and proceedings aforesaid be examined, and that the judgment aforesaid, in form aforesaid, may be in all things affirmed, &c.

Dated October 11, 1879.

EDWARD SALOMON,
Attorney for Defendant in Error, 115 Broadway, New York City.

82 (Endorsed:) U. S. Supreme Court. The United States of America vs. A piece of land, &c., known as No. 3 Abattoir Place, &c. Joinder in error. Edward Salomon, att'y for def't in error, 115 Broadway, N. Y. City.

I hereby consent that the within joinder in error may be filed and made a part of the record in this case, nunc pro tunc, as of the 2nd Monday of October, 1879.

STEWART L. WOODFORD,
E. B. H. *U. S. Att'y.*

(Also endorsed:) Supreme Court U. S., 1881. October term, No. 344. The United States, pl'ff in error, vs. Frederick Frericks, cl'm't. Joinder in error. Filed 11th Oct'r, 1881.

(Indorsement on cover:) No. 344. The United States, plaintiff in error, vs. Frederick Frerichs, claimant of the house, lot, &c., known as No. 3 Abbattoir Place, in the city of New York. S. N. Y., C. C. U. S. Filed 15th October, 1879.

16-160

In the Supreme Court of the United States.

OCTOBER TERM.

THE UNITED STATES
v.
FRERICHS. } No. 74.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM.

THE UNITED STATES
v.
FRERICHS. } No. 74.

BRIEF FOR THE UNITED STATES.

This was an information seeking the forfeiture of a distillery in the city of New York, and *Frerichs* intervened as claimant, alleging that it was only a *vinegar* distillery.

Upon the trial in the district court the presiding judge held that there was no evidence of a distillation of alcohol upon the premises in question, and thereupon directed a verdict for the claimant. He also refused to enter a certificate of "reasonable cause."

The record having been carried up to the circuit court it was adjudged that there was no error therein.

For error is assigned the terms of this second judgment:

The practical matter being to obtain an entry of probable cause for the seizure by the collector.

102 Nassau Street.

The statutory provision upon the subject of reasonable cause is as follows (the former section being given merely as a context for the latter):

In suits or informations brought, where any seizure is made pursuant to any act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause is shown for such prosecution to be judged of by the court. (Rev. Stat., sec. 909.)

When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was a reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not in such case be entitled to costs, nor shall the person who made the seizure nor the prosecutor be liable to suit or judgment on account of such suit or prosecution: *Provided*, That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent. (*Ibid.*, sec. 970.)

If the court below has made an improper, or has failed to make a proper, entry upon this record it is submitted that such record is erroneous. This record shows, in effect, an incidental judgment of *want of reasonable cause*, whereas by law as is alleged, there should have been entry of the *existence of such cause*. The matter is one in which the collector has by law a substantive right. An *entry* does not give or destroy that right, but is only evidence thereof. It may be "exclusively admissible evidence," but that is a quality common to most records, which are generally only evidence of pre-existing right. What is "probable" or "reasonable" *cause* upon a given state of facts is a matter of law, and a mistake therein is, therefore, a mistake in law; and if

the record is required to show the action of the court thereabout, and does show it, such mistake is error in law.

The question as to reasonable cause here depends of course upon the evidence before the collector at the time when he ordered the seizure. According to a definition thereof, given by this court in 1813, and ever since accepted, the question is, whether the collector ordered the seizure under "circumstances which warranted suspicion." (Locke's case, 7 Cranch, p. 348; Averill *v.* Smith, 17 Wall., p. 92.) For seventy years these have been the terms by which this court has warned collectors that their official responsibility is to be tested.

The circumstances of the seizure here were that the distillery was in a part of the city noted, and well fitted, for illegal distillation (folio 54); that on the 13th of April, 1876, one of the collector's deputies had reported that he had seized the distillery because, upon finding it closed, he had entered by the skylight and perceived a smell of rum; that, this seizure having been released by the collector, upon the 20th of May a revenue agent again informed him that the distillery was "all wrong," that alcohol was being generated there, and thereupon requested that it should be seized. This was done, and is the seizure complained of.

In stating the grounds upon which he went in seizing, the collector stated that they were the "facts which originally came to him"; first, that he believed that Frerichs could not distill the matter brought to him with-

out making alcohol, and, secondly, that his business of making vinegar was a mere "cloak," &c. (folio 54).

I submit that it is evident that by "facts" he meant *statements* believed to be true; and also, that these statements, made by sworn officers who had personally examined the premises, were well calculated to excite the "suspicion" of an officer required by his duties to be on the alert.

I also submit that upon the trial of a case arising out of such a seizure the circumstance that upon the whole evidence of the plaintiff as affected by the cross-examination, the court may well be of opinion that there is no evidence to go to a jury, does not control the other question, *Whether upon the state of things which was originally made out to the collector, he was not authorized to "suspect" the distillery.* The management of such cases in court is under the direction of other officers of the United States than the collector, and is not in behalf of him, but of the public. The details of such management may well make out a case of innocence for the property seized without impeaching the original discretion of the collector. The "probable cause" under section 909 may have to be judged of upon evidence of which that which goes to show "reasonable cause" under section 970 is only *a part*—a part having a different color. It seems to be the duty of the presiding judge to make that discrimination, and to certify accordingly.

I submit that after such discrimination it appears in this case that the collector had "reasonable cause" for the seizure in question.

S. F. PHILLIPS,
Solicitor-General.

C

16-160

Supreme Court of the United States.

THE UNITED STATES OF AMERICA,

Plaintiffs in Error,

against

FREDERICK FRERICHS, Claimant of the House, Lot, &c., No. 3 Abattoir Place, New York City,

Defendant in Error.

POINTS AND ARGUMENT FOR DEFENDANT IN ERROR.

EDWARD SALOMON,

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115 Broadway, New York City.

NEW YORK:

Stationer, 102 Nassau Street.

Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Plffs. in Error,

vs.

FREDERICK FRERICHS, Claimant of the House, Lot, &c., No. 3 Abattoir Place, New York City,
Deft. in Error.

POINTS AND ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT.

This was an information, filed May 26, 1876, in the District Court of the United States for the Southern District of New York, against certain property of the defendant in error, claiming that it was forfeited to the United States because he carried on a distillery of alcohol contrary to law. The defendant in error duly filed his claim and answer denying the forfeiture, and the case was tried before Hon. Samuel Blatchford, District Judge, resulting in a verdict upon the direction of the Judge in favor of the claimant, whereupon, on the 14th of May, 1877, a judgment was entered dismissing the information.

A motion having been made after the verdict for a

certificate of reasonable cause, it was referred by the Court to a Commissioner to take and report such further testimony as might be offered on either side upon that motion. Upon the coming in of that testimony, an order was entered at the foot of the judgment, December 18, 1877, denying the certificate of probable cause.

A bill of exceptions was thereupon settled and filed, and the case brought to the United States Circuit Court for the Southern District of New York by a writ of error, where it was heard by the Chief Justice of this Court, and the judgment and order affirmed July 31, 1879. To review this judgment of affirmance a writ of error has been sued out of this Court.

POINT I.

The Judge of the District Court did not err in directing the jury to bring in a verdict for the claimant upon the evidence produced by the plaintiffs.

The evidence of the plaintiffs showed that Wagner & Hoffmeister were manufacturers of vinegar at a factory about a block and a half from No. 3 Abattoir Place, where the claimant's still was, and that their process was as follows: molasses was diluted with water, yeast added and fermented, then the fluid was filtered through charcoal, it contained six per cent. alcohol; it was then mixed with vinegar and put through generators; in the generators the air would oxidize the alcohol and take two equivalents of hydrogen from the alcohol, and add two equivalents of oxygen, and thus produce acetic acid.

The evidence further showed that this product of Wagner & Hoffmeister's factory had no alcohol or trace of alcohol in it, but was simply and really vinegar, which is diluted acetic acid, mixed with certain impurities which gave it a bitter taste and

color, and made it unsalable in the market; that this impure vinegar was then carried in barrels to the claimant's place at No. 3 Abattoir Place, where it was distilled in order to remove the impurities; that the result of this distillation was purified vinegar; that no alcohol was, in fact, or could be produced by the distilling of that impure vinegar; that the acetic acid by the distillation would go off in vapor as acetic acid, leaving the impurities behind, and that this purified vinegar was then taken back to Wagner & Hofmeister's factory, who added whiskey to it, and put it through generators again in order to make it stronger, the purified vinegar alone being too weak for the market.

The evidence further showed that the distilling apparatus belonged to and was in possession of the claimant; that he had a contract with Wagner & Hofmeister, who gave him two cents a gallon for distilling their impure vinegar, he paying all expenses. (Printed Record, fols. 39, 40, 42, 43, 44.)

There was no evidence of fraud or fraudulent practice of any kind, and the still had been duly registered by the claimant, as required by Sec. 3258 of the R. S. (Printed Record, fols. 37 and 38.)

The claimant was certainly not a "distiller," within the meaning of Sec. 3247 of the R. S., nor were Wagner & Hofmeister such distillers, or had the still in their possession or use. The claimant was the owner of the still, in which Wagner & Hofmeister had no interest, and he used it simply to purify vinegar.

No alcohol was in the impure vinegar, and no alcohol or trace of alcohol was produced or could be produced or separated by this distillation. The distillation was simply a *bona fide* means of purifying the impure vinegar lawfully produced by Wagner & Hofmeister, and violated no law.

It was claimed at the argument of the case in the Courts below, that the entire process was contrary to the spirit of the law, which intended that the alcohol used for the production of vinegar should be

tax-paid alcohol. We submit that the position is utterly untenable. Sec. 3282 of the R. S., shows the reverse to be true. The last sentence of that section forbidding the distillation of such "*fermented* liquids," clearly has reference to "a mash, wort or wash fit for distillation, or for the production of spirits or alcohol," and not to a process of distillation of impure vinegar, by which no alcohol can be produced.

The history of the law embodied in Sec. 3282, is interesting. Under the law prior to the Act of July 20, 1868, it had been decided that the manufacture of vinegar was legal by distilling a fermented mash and the production of alcoholic vapor thereby, which was passed directly into a mixture of cold water and vinegar, which thence went to standards where it was oxidized and flowed out as vinegar. (*One Vaporizer, &c.*, 2 Benedict, 438.)

Probably Sec. 4 of the Act of July 20, 1868, (15th U. S. Stat. at Large, p. 126) was enacted to avoid the effect of this and other similar decisions, and it was afterwards construed as prohibiting the manufacture of vinegar by simple process of fermentation and oxidation of the alcohol thus produced. (*U. S.* vs. *Prussing*, 2 Bissel, 344.) To avoid this, Congress, by joint resolution of March 3, 1871 (16 U. S. Stat. at Large, p. 601), so amended this section "as not to apply to the making of fermented liquids used for the manufacture of vinegar exclusively," and the section so amended was afterwards reproduced in the R. S. as Section 3282. So the manufacture of vinegar by means of a fermented mash, as Wagner & Hofmeister made it, became undoubtedly legal since March 3, 1871, and there is nothing in the letter or the spirit of the law which prohibited the purification of the vinegar so produced by distillation or otherwise.

March 1st, 1879, Sec. 3282 was again amended by Congress, by striking out in about the middle thereof the words "or any vapor of alcoholic spirits," and at the end of the section the words "but nothing

herein contained shall be construed to authorize the distillation of such fermented liquids, except in an authorized distillery," thereby reinstating the law on this subject as it was held to be prior to the Act of July 20, 1868. This last modification, while it has, of course, no direct bearing upon this case, yet shows that the last sentence of Sec. 3282, thus repealed, only had reference to the distillation of a mash fit for the production of alcohol, and was not intended to prohibit the distillation of vinegar for the purpose of purification when no alcohol was produced. (20 U. S. Stat. at Large, p. 335.)

I respectfully submit that both the law and the facts of this case were perfectly plain and properly applied by the learned Judge of the District Court, and that his instruction to the jury to render a verdict for the claimant was correct, and the judgment of the Circuit Court, affirming that of the District Court, should be affirmed by this Court.

See Opinion of Chief Justice Waite, printed Record, fol. 68, *et seq.*

Point II.

The order of the District Court, denying the motion for a certificate of reasonable cause, affirmed by the Circuit Court, cannot be reviewed by this Court.

1st. That order is no part of the final judgment in the case, it is a mere collateral matter, which may follow the judgment. The law authorizing the Court to entertain a motion for a certificate, makes the rendition of the judgment a condition precedent. There is no appeal given from the denial of this collateral motion.

R. S., Sec. 970.

2d. The question of "reasonable cause of seizure," is one of fact, confided to the court which has tried the case, and this Court cannot upon a writ of error reverse a judgment for any error in fact.

R. S., Sec. 1011.

Point III.

If, however, the Court should be of opinon that it can review the order of the District Court denying a certificate of reasonable cause, then, upon the merits, I insist that the District Court did not err in denying such certificate.

FREDERICK FRERICHS, the claimant, testified that he called upon Collector Coster first about six weeks before the still was put up, and asked him if it would be lawful for a vinegar manufacturer to ferment any liquid, grape sugar, corn starch, molasses, cider, wine, or any kind of mash for the purpose of manufacturing vinegar; that the collector told him that that would be against the law; that he also asked him if, for the purpose of purifying and whitening such vinegar, he could distill it, and that the Collector told him that the law would not prohibit that, if he would first register the still. (Printed Record, fol. 46.)

He further testified that about a week afterwards he saw the Supervisor, Sewell, who, upon his inquiry, told him that it would be lawful to ferment anything for the purpose of manufacturing vinegar, and that it would be lawful to distill such vinegar, but not by the same person or on the same premises, and that he should go back to the Collector and explain it to him. (Printed Record, fol. 47.)

He further testified that he called a second time

upon the Collector about three weeks before the still was put up, in company with Wagner & Hofmeister, and told him that he had seen the Supervisor, who had informed him that it would be lawful for a vinegar manufacturer to ferment liquid for the purpose of manufacturing vinegar, and that it would also be lawful to distill such vinegar for the purpose of purifying it, that the Supervisor had told him to explain the matter again to the Collector; that he told the Collector the arrangement which he was to have with Wagner & Hofmeister, who were to manufacture the vinegar, and he was to distill it under a contract for a certain compensation per gallon at a different place, and that the Collector was then entirely satisfied, and told him to go on, but to register his still when it was ready. (Printed Record, fol. 46.)

COLLECTOR COSTER'S statement concerning these interviews is somewhat different. He testified that Frerichs first came to him in April or May, 1875, and asked him if, as a vinegar manufacturer, he could use a still on his premises to distill his fermented liquor; that he told him he could not, and Frerichs appearing dissatisfied, he advised him to apply to the Commissioner of Internal Revenue and the Supervisor, as his opinion was not final on those questions. (Printed Record, fol. 55.)

He further testified that Frerichs came to him a second time in February, 1876, and said that he proposed to set up the still and *use the product made by another vinegar manufacturer*, so as to overcome that part of the section where he could not have it on his own premises, that he called the product which was to be distilled "fermented liquor"; that he, the Collector, told him that he would only thus overcome part of the objections; "that by distilling the product of another manufacturer he would become a distiller," and *again referred him to the Supervisor, as his, the Collector's, opinion was not final.* (Printed Record, fol. 55.)

He further testified that Frerichs called again the

latter part of March, 1876, accompanied by Mr Hofmeister, whom he introduced as the person who was to make the product which he was to distill and *stated that he had seen the Supervisor, who had said that it was all right, whereupon he (the Collector) told him that if the Supervisor said it was all right, he would not make any further objection,* that it would be necessary to register the still. (Printed Record, fol. 55.)

The still was registered by Frerichs on the 1st of April, 1876, for the manufacture of acetic acid. (Printed Record, fols. 37 and 38.)

After the still was put up, the Collector instructed Deputy-Collectors Beatty and Sheals (the latter had charge of that division) to look after it. (Printed Record, fols. 56 and 57.)

Sheals and other deputy-collectors came there very often, and took away samples. (Printed Record, fol. 53.)

About two weeks after the still was put up, on the 13th of April, BEATTY went to the place, took a sample of the product of the still, took it to the Collector, and reported that in his opinion they were producing alcohol from the process they had there. He made no examination of the sample or of the product brought from Wagner & Hofmeister's place, but judged only from the smell of the place, the sample and the mash. (Printed Record, fols. 38, 56, 60, 62.)

COLLECTOR COSTER further testified that the next day Frerichs brought him the letter of Dr. Endemann, which he produced (U. S. Exhibit 3), and in which the latter certifies that he had analyzed the vinegar distilled at Frerichs' place, and found it perfectly free from alcohol, that thereupon he, the Collector, did not examine the sample, but threw it aside; that Beatty thought the sample smelt very much of rum; that two or three weeks afterwards Mr. Beatty again reported to him that he had been

at the place, found it closed, had gone through the skylight, then examined the place, and was of opinion from the smell that thay were making rum there, and had seized the place; *that he (the Collector) then told him he thought they had not sufficient evidence to proceed with the seizure, and ordered him to release the place* (Printed Record, fols. 56 and 57.

The *particular information on which the seizure was made* came from Revenue Agent McLeer, who told the Collector that in his opinion the distillation of the product of Wagner & Hofmeister produced alcohol. (Printed Record, fols. 54, 58, 59 and 60.)

McLeer made no examination of the impure vinegar produced by Wagner & Hofmeister, nor of the product as distilled by Frerichs. (Printed Record, fol. 61.)

This was all the information the Collector had except the vague and unfounded suspicions of another deputy, Brundage. (Printed Record, fols. 59 and 60.)

He never visited either Wagner & Hofmeister's or *Frerich's place, and never caused an examination of the product of Wagner & Hofmeister's place carried to the still, nor of the product of the still.* (Printed Record, fols. 59 and 60.)

He did not apply for information to the Supervisor, his superior, who had given the opinion that the process was lawful, because he thought Frerichs had a written statement from the Supervisor. (Printed Record, fol. 57.)

Dr. Endemann, the expert chemist, examined as a witness of the Government at the trial, also fully explained to Sheals, Beatty and other deputy-collectors, orally, the process, and about the smell of fusel oil, on the day when the first seizure or detention which was abandoned, had been made by Beatty. (Printed Record, fol. 63.)

1. *Upon the facts in this case, there was no "reasonable cause" for this seizure.*

It was made upon the ground or pretense that the impure vinegar, as produced by Wagner & Hofmeister, when distilled by Frerichs, would produce alcohol which would enter into the product of his still.

At the trial upon the plaintiffs' own case, it was shown conclusively that this pretense was without any foundation in fact, that Wagner & Hofmeister produced impure vinegar by a very well known and perfectly legitimate process of turning the alcohol contained in a mash into acetic acid by the use of generators; that the product of their factory was vinegar mixed with certain impure substances, and that Frerichs' distillation of this impure vinegar only had the object and the result of purifying the vinegar by leaving the less volatile impure substances in the still.

A little, *a very little reasonable examination* on the part of the Collector or his deputies, would have shown this to demonstration, and dispelled the vague and utterly unfounded suspicions on their part that any alcohol was produced by the distillation.

There was no attempt at concealment on the part of Frerichs or Wagner & Hofmeister, but every reasonable precaution was taken by them first to ascertain from the Collector and the Supervisor whether this distillation would be legal, and next to inform the officers that in fact there was no alcohol produced.

There is a difference in the testimony of Frerichs on the one side, and Coster on the other, as to the term used by Frerichs when he came to inquire and described the liquid which he intended to distill; the former says that he called it "vinegar," the latter, "fermented liquor." The probability is altogether in favor of the correctness of the former, but it is of no consequence what term was used, for, in

fact, the Collector and his deputies knew that he distilled the product of Wagner & Hofmeister's vinegar factory; all the deputies and McLeer examined repeatedly the process at that factory, saw the generators and all, and tasted the sour taste of that impure vinegar.

There was not a shadow of ground for the suspicion that this impure vinegar contained anything which by distillation would produce alcohol.

The Collector cannot justify himself by relying upon the groundless suspicions of others.

He was bound to make a reasonable examination of that product to ascertain whether in fact alcohol could be produced by distillation of it before making the seizure. The crude opinions expressed by men utterly ignorant upon the subject, such as Beatty, Brundage and McLeer, furnish no justification for him.

The less so, since the Collector had been informed before the still was put up that, contrary to his own vague notions, the *Supervisor, his superior officer, to whom he had himself referred Frerichs for a decisive opinion, had said that the process was perfectly legal, which opinion he had acquiesced in and expressly recognized as binding him.*

The exercise of a reasonable precaution and fairness would have compelled him to inquire first of the Supervisor about the grounds of his decision before violating it by the seizure.

Again, when Dr. Endemann's letter of April 13th was brought him, telling him that the vinegar distilled by Frerichs had been analyzed by him and was perfectly free from alcohol, he at once acquiesced in that gentleman's statement and threw aside the sample which Beatty had brought him, and of which Beatty had told him that it smelled strongly of rum. Why did he not apply to Dr Endemann for further information, if his suspicions were again aroused by the twaddle of his subordinates and of McLeer? *The evidence which was so conclusive at the trial and so clearly*

showed the groundless character of the suspicions of the officers, and which was elicted by the examination of Dr. Endemann, his own witness, was perfectly accessible to him before the seizure, and it was plainly his duty to have ascertained the truth so easily within his reach! If he had any doubts, he might have told Frerichs to get from Dr. Endemann or some other competent person a full and clear description of the process.

Collector Coster judged his own case when, about two weeks before the seizure in question, *he ordered Beatty to release the one which the latter had then made, because the evidence was insufficient to support it! No new evidence came after that;* the opinions of Brundage and McLeer were founded upon no better basis and no other fact than that on which Beatty relied, to wit, the smell of the fusel oil and the molasses taste in the impure vinegar. *That smell and that taste was all the foundation for Beatty's, Brundage's and McLeer's foolish and groundless supicion, and upon it alone this seizure was based* and Frerichs' property ruthlessly seized, *notwithstanding* the pains the latter had taken to inform himself of the legality of his operation before putting up the still, *notwithstanding* his repeated applications, explanations and inquiries to and of the Collector and Supervisor, *notwithstanding* the assurances of the Supervisor that his process was legal and then of this same Collector that he would make no further objections, *notwithstanding* the written certificate of an eminent chemist, perfectly satisfactory at the time, although it could not be true, if the suspicious smell of the sample was an indication of the presence of rum, *notwithstanding* the ignorance of the persons whose opinion was taken and the ease with which the truth might have been ascertained, *notwithstanding* the fact that, after the first abandoned attempt of a seizure, Dr. Endemann had again fully explained the whole process to the Deputies Beatty, Sheals

and Brundage, and especially the smell of fusel oil which had aroused their suspicions.

As to what circumstances would warrant a suspicion sufficient to justify a seizure, see *Locke* vs. *U. S.*, 7 Cranch, 339.

I respectfully submit that in justice and fairness and common sense the Collector had no reasonable cause for this groundless seizure.

2. *The fact that other seizures had been made in that neighborhood*, not however in this place, during previous years, *furnished of itself no ground of seizure*, for there is not a scintilla of proof warranting a suspicion that Frerichs was making and carrying off illicit spirits.

Indeed, while the Collector adverted to the suspicious neighborhood when first stating the grounds of seizure, he never afterwards adverted to it again, not even when he told Frerichs the grounds thereof. It was thrown in evidently only as a make-weight.

The same applies to his second ground that illicit spirits could have been made there. (Printed Record, fols. 54, 57, 58 and 59.)

3. *Nor can this seizure be justified upon any supposed doubtful construction of the law.* IT WAS NOT MADE UPON ANY POINT OF LAW. It was made upon supposed facts and suspicions of facts, namely, upon the suspicion that by the distillation of the impure vinegar alcohol was produced, and upon nothing else. The case does not come within the purview of *U. S.* vs. *Recorder*, 2 Blatchf., 119, or any other case where a reasonable doubt as to the construction of the law has been held sufficient for a certificate of probable cause.

4. Even if there had been any reasonable doubts in the mind of the Collector concerning the legality of this process, under all the circumstances of this case, it is respectfully submitted that he should not have proceeded to the extremity of a seizure, but

should, by some other less harsh proceeding, have tested its legality in law, and that the facts of the case are utterly insufficient to entitle him to a certificate of reasonable cause.

5. To conclude, I beg leave to quote the language of the Chief Justice upon this point of the case: "If an order of the District Court, refusing a certificate of probable cause under the provisions of section 970 of The Revised Statutes, can be reversed by the Circuit Court upon a writ of error, it ought not to be done except in a clear case. The evidence which has been embodied in this bill of exceptions is not such as to satisfy me that any error was committed in this particular." (Printed Record, fol. 70.)

EDWARD SALOMON.

Of Counsel for Defendant in Error.